TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1917.

No. 12.

(19,897.)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1907.

No. 12.

HENRY M. EARLE, ADMINISTRATOR *DE BONIS NON*, WITH THE WILL ANNEXED, OF WILLIAM E. EARLE, DECEASED, APPELLANT,

vs.

T. PERCY MYERS AND JOHN J. HAMILTON, ADMINISTRATORS *DE BONIS NON*, WITH THE WILL ANNEXED, OF JAMES H. CAUSTEN, DECEASED.

APPEAL FROM THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

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In the Court of Appeals of the District of Columbia

THOMAS E. WAGGAMAN, Adm'r, &c., Appellant,
vs.
HENRY M. EARLE, Adm'r, &c. } No. 1422.

and

HENRY M. EARLE, Adm'r, &c., Appellant,
vs.
THOMAS E. WAGGAMAN, Adm'r, &c. } No. 1423.

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a Supreme Court of the District of Columbia.

THOMAS E. WAGGAMAN, Administrator *de bonis non* with the Will Annexed of James H. Causten, Deceased, Complainant,
vs.
HENRY M. EARLE, Administrator *de bonis non* with the Will Annexed of William E. Earle, Deceased, Defendant. } No. 21962. In Equity.

UNITED STATES OF AMERICA, *District of Columbia,* } *ss:*

Be it remembered, that in the supreme court of the District of Columbia, at the city of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had, in the above-entitled cause, to wit:—

1 *Bill of Complaint, &c.*

Filed January 2, 1901.

In the Supreme Court of the District of Columbia.

THOMAS E. WAGGAMAN, Administrator *de bonis non* with the Will Annexed of James H. Causten, Deceased,
vs.
HENRY M. EARLE, Administrator *de bonis non* with the Will Annexed of William E. Earle, Deceased.
} In Equity. No. 21962.

To the supreme court of the District of Columbia, holding an equity court for said District:

Complainant states as follows:

1. That on the 18th. day of April, 1885, he was duly appointed by this court, holding a special term for orphans' court business, administrator *de bonis non* with the will annexed of the estate of James H. Causten, deceased, and having duly qualified by giving the bond required received his letters, and has been acting in that capacity ever since.

2. The defendant is the administrator *de bonis non* with will annexed of William E. Earle, late of the District of Columbia, having been appointed by the same court, and duly qualified as such. The complainant sues in the capacity aforesaid, and the defendant is sued in his representative capacity.

3. Among the assets of the estate of said James H. Causten were certain papers, books, documents and records relating to the French spoliation claims which, at the time of complainant's qualifi-
2 cation as such administrator, were in the custody of William E. Earle, the defendant's intestate. With a view of continuing in the possession of said papers and documents, and of obtaining the right to use the same in the prosecution of the claims to which they related, certain proceedings were had in this court, holding a special term for orphans' court business, looking to a contract between this complainant and said William E. Earle, and a decree was passed on the 1st day of May 1885, by said court directing the making of such contract between said parties.

4. Thereafter, on June 12th, 1885, this complainant, acting as such administrator, and by virtue of said decree, entered into a written contract with said William E. Earle, which was signed by complainant and said William E. Earle in duplicate, said contract having by decree of said court passed on the 5th day of June, 1885, been approved. A true copy of said contract is hereto annexed, marked Exhibit A., and prayed to be read and considered as a part of this bill.

5. The bond required by said decree, and referred to in said contract, was duly executed, approved by the court, and is on file in the office of the register of wills for said District.

6. After the making of said contract, said William E. Earle continued in the custody of said papers and used the same in the prosecution of said claim so far as cases in which he was so counsel were concerned, and also permitted the same to be used in cases in the hands of other attorneys, who associated said Earle with them in the prosecution of such claims.

3 7. Said William E. Earle was an attorney at law, a member of the bar of this court, engaged in general practice, and also largely engaged in the prosecution of said claims, and he continued to make use of said papers in the manner hereinbefore indicated until the time of his death, which occurred on the 13th. day of August, 1894. In the interval between the making of said contract and the death of said Earle he received a large number of fees, both by way of retainer upon his employment in various French spoliation claims, and by way of final compensation upon their final collection. He also made certain necessary expenditures for printing, but up to the time of his said death never rendered any account to complainant showing itemized statements of all fees received by him, and of all disbursements, a share of which, under said contract, was properly chargeable against the interest of the said Causten estate; nor did he pay to complainant each six months after the date of said contract the proportionate part of the fees due complainant's said estate, nor did he ever pay to complainant any amount under said contract. Complainant, from time to time demanded of said William E. Earle settlements, as provided for by said contract, and payment of the share of fees due by him to said estate, to which demand said William E. Earle replied by claiming that he was not, at the dates of said demands, indebted to said estate, by reason of the fact that certain disbursements made by him exceeded the amount of fees received. The validity of these disbursements and the right of said William E. Earle to charge them, in whole or in part, against the proportion of the fees due the Causten estate was denied by this complainant, who was then allowed by said William E. Earle to examine

4 certain books of account then exhibited by said Earle containing items of expense which said Earle claimed were chargeable against said estate. Having made such examination, this complainant notified said Earle that the statement of account, as contained in said books, was not accepted by him, and the accuracy thereof would be contested on final settlement. Said Earle was particularly informed by complainant that certain items, under the head of office expenses, attorney's fees and charges for expenses in connection with obtaining legislation, would be contested as not legitimate or proper charges, and that strict proof of the amount of fees received would be required. Said William E. Earle agreed that when the matter was in condition for a final accounting, or if not that, when other claims had been paid so as to make a partial

accounting, all said matters of difference, if not settled by agreement of the parties, could be otherwise adjusted by judicial proceedings. And so the matter stood until after the death as aforesaid of said William E. Earle, and the appointment and qualification of his administrator, the defendant hereto. Immediately thereafter complainant requested of the defendant a full accounting and settlement under said contract, which accounting the defendant, from time to time, promised to make, but the rendering of such account was postponed by said defendant, who suggested a variety of reasons as explaining his delay, such as unsettled cases and controversies with other attorneys, and the length of the account to be submitted. Complainant, through his counsel, continued his demands upon the defendant until finally, about November 3rd, 1900, said defendant submitted an account of some thirty typewritten pages, purporting to show a total of fees received by said William E. Earle and his estate of $70,909.27, and claiming various disbursements for
5 expenses, aggregating $62,445.46, leaving a net profit of $8,463.81, of which, under said contract, said Causten estate would be entitled to twenty-five per cent. Shortly after the receipt of said account complainant, through his attorney, notified the defendant in writing that said account was not accepted, and that its accuracy was disputed.

8. Complainant avers, upon information and belief, that said account, as rendered, is inaccurate in that the defendant has failed therein to charge himself with all of the fees, for which his intestate and himself are responsible under the terms of said contract, and has neglected to embrace therein retainers so received. Said account is also incorrect in that it embraces charges for disbursements for no part of which the said Causten estate is liable, and in items of expenditures for a proportion of which said Causten estate is liable, a larger amount is charged against it than is permitted by the terms of said contract, and other items of expense set forth in said account are illegal and not permissible in any accounting between this complainant and said William E. Earle, or his legal representative.

9. Complainant is unable to settle said account with the defendant, or adjust the matters of difference between them, and is without relief in the premises, except by the interposition of this court.

Prayers.

Wherefore, complainant prays as follows:

6 1. That the defendant be required to make and file a full, true and accurate account of all moneys received by said William E. Earle in his life time, and by the defendant after his death, as fees for services in connection with the French spoliation claims, whether as retainers or final payments, and whether relating to cases prosecuted by said William E. Earle severally, or with others, and whether the said books and documents belonging to the

Causten estate were used or not, and that in such account the said defendant may be required to set forth with particularity the names of all persons from whom such fees were received, the case or cases to which the same related, and the dates of payment either to said William E. Earle, or to his representative after his death.

2. That the defendant may be required in such account to set forth all disbursements claimed by him, specifying date of payment, to whom paid, and upon what account.

3. That upon the coming in of such account, the same may be passed upon by the court with reference to the obligations of said William E. Earle and his estate under the terms of said contract, and that all claims of disbursement not authorized by the terms of said contract, or by law, may be rejected.

4. That upon final hearing a decree may be passed adjusting all matters of difference between the parties hereto, and decreeing the payment to complainant by the defendant of the amount finally determined to be due, with such interest as may be proper.

5. That if necessary this cause may be referred to the auditor of this court, with instructions to state an account between the
7 parties hereto under the terms of said contract, and to report to this court for its further order in the premises.

6. That the rights of the parties hereto in respect to said books, papers and documents in the future may be determined in this cause, and the future custody thereof determined.

7. That complainant may have such other and further relief in the premises as the nature of the case may require.

To which end complainant prays for process against the said defendant, Henry M. Earle, administrator as aforesaid, requiring him to appear and answer the exigency of this bill.

THOS. E. WAGGAMAN,
Complainant.
IRVING WILLIAMSON,
W. J. MILLER,
S. T. THOMAS,
M. J. COLBERT,
Solicitors for Complainant.

8 COMPLAINANT'S EXHIBIT A.

Filed January 2, 1901. J. R. Young, Clerk.

This contract made this 12th day of June, A. D., 1885, by and between Thomas E. Waggaman, administrator *de bonis non*, with the will annexed, of James H. Causten, deceased, duly appointed and qualified, acting in this behalf under and by virtue of a decree passed by the supreme court of the District of Columbia, holding a special term for orphans' court business, in the matter of said estate, on the 1st day of May, 1885, of the first part, and William E. Earle, of the second part, both of the District of Columbia, witnesseth:

Whereas said Earle is in possession of the books, documents, papers and records relating to the French spoliation claims, of which said James H. Causten died possessed and desires to continue in the custody thereof, to the end that the same may be used in the prosecution of said claims. And whereas said Waggaman, administrator as aforesaid, hath been authorized to enter into a written contract with said Earle, in respect thereof, substantially as set forth in said decree of May 1st, 1885. Now, therefore, in consideration of the premises, said parties agree as follows:

1. Said Earle is to have the custody and charge of said papers, books, documents and records, and the exclusive use thereof, until the final adjudication of all the cases in which the same shall be used in any manner as evidence or otherwise, with the privilege to said Earle of allowing the same to be used in cases in the hands of other attorneys who may associate him said Earle, in the prosecution thereof.

9 2. True books of account shall be kept by said Earle of all retainers and fees received, or which shall hereafter be received by him, and also all expenses attending the prosecution of the French spoliation claims in which he shall be engaged as counsel, or otherwise, which books of account shall be open at all times to the inspection of said administrator, or his successor in office.

3. In consideration of the use of said books, papers, documents and records, said Earle shall pay to said Waggaman, administrator as aforesaid, or his successor in office, twenty-five (25) per cent. of all fees received, or which shall hereafter be received by him in each case, after deducting from all such fees received, or which shall hereafter be received by him the proper expenses incurred by him, since the passage of the act of Congress referring said cases to the Court of Claims, in the prosecution of said French spoliation claims, such as clerk hire, printing, advertising, office rent, and the compensation of other attorneys necessarily associated with him, and in whose compensation said Earle does not share. And settlements between said Earle and said Waggaman, administrator as aforesaid, or his successor in office, shall be made every six months, and the proportionate part of said fees due said administrator, shall be paid over to said administrator or his successor in office, at such settlement.

4. In further consideration of the use of said books, papers, documents and records, it is further agreed by said Earle that said payment of twenty-five (25) per cent. shall be made to said administrator, or his successor in office, upon the fee of said Earle in all cases relating to said French spoliation claims prosecuted by said Earle severally or with others whether the said books, papers,

10 documents and records shall be used as evidence, or in enlightening the counsel engaged in such cases or not.

5. All amounts heretofore or hereafter received by said Earle as retainers or advances for expenses shall be first applied to the payment of the expenses referred to in the third paragraph of this

contract, and such retainers or advances shall not be divided between said Earle, and said administrator or his successor in office, until the final settlement under this contract.

6. This contract shall be in full force and effect upon the execution by said Earle of the bond required by said decree, the approval thereof by the court, and the ratification of this contract by the court.

In witness whereof said parties have hereunto set their hands in duplicate, the day and year aforesaid.

THOS. E. WAGGAMAN,
Administrator de bonis non with the Will Annexed of James H. Causten.
WM. E. EARLE.

Witness:
IRVING WILLIAMSON.

11 Filed January 2, 1901.

Supreme Court of the District of Columbia, Holding a Special Term for Orphans' Court Business.

In re Estate of JAMES H. CAUSTEN, Deceased.

It is this 5th day of June 1885 ordered by the court that upon the signature of the parties to the above contract, and the approval of the bond therein referred to, this contract stand approved.

A. B. HAGNER,
Associate Justice.

12 *Answer.*

Filed March 5, 1901.

In the Supreme Court of the District of Columbia.

THOMAS E. WAGGAMAN, Administrator *d. b. n. c. t. a.* of James H. Causten, Deceased, *against* HENRY M. EARLE, Administrator *d. b. n. c. t. a.* of William E. Earle, Deceased.	In Equity.	No. 21962.

To the supreme court of the District of Columbia, holding an equity court for said District:

In answer to the bill of complaint filed herein, the defendant, Henry M. Earle, respectfully states as follows:

First. The defendant admits the allegations contained in paragraphs one, two, three, four, five and six of the plaintiff's bill.

Second. In answer to the seventh paragraph defendant admits the statements therein contained, relative to the prosecution of said claims by William E. Earle, and that he received certain fees and made certain expenditures as therein stated, and that no payment was made to the complainant on account of the same, for the reason stated in said paragraph, viz: that it was agreed by and between the said William E. Earle and complainant that when other fees had been paid so as to make a partial accounting of such matters, all differences would be settled by agreement, or otherwise,
13 between the parties. The defendant further admits that the matter thus stood until he was appointed and qualified as administrator, which was in —— 1895, but denies positively that any settlement of a contract between the complainant and said William E. Earle was demanded at the time alleged, nor were any fees collected until sometime subsequent to March 4th, 1899, and the defendant therefore states, that the allegation to the effect that an account was promised by him, from about the time of his appointment as administrator, to about November 3rd, 1900, is absolutely false and untrue. Soon after the appropriation of March 4th, 1899, and a collection of a small part of the fees thereunder, the complainant, through his attorney, demanded an accounting, which the defendant promised to make, and did make as soon as was practicable; and the defendant states that the allegation "that he suggests a variety of reasons explaining the delay," is untrue; and in further answer thereto defendant avers that it was at all times understood that it was impossible for him in person to make said accounting, as he was not aware of the details concerning same, and was obliged to depend upon Mr. Theodore J. Pickett, who had charge of the accounts, under the said William E. Earle, from about the time that the said contract with the Causten estate was made, and owing to the fact that the said Theodore J. Pickett was engaged in collecting the fees under said appropriation, and preparing cases, which he was obliged to do under the terms of the said contract, and for the further reason that this work was delayed by considerable litigation, with other attorneys who had an interest in said fees.

That a number of said fees were not collected until about
14 November, 1900, and it was useless to file said account until same was complete. The defendant admits that he was notified through the attorney for complainant, that the account was not accepted, but denies that any reason was given for same as alleged, but states that he immediately informed the counsel for complainant that the account was, in his opinion, correct in every detail, and that he would be glad, however, if there was any question concerning it, to co-operate in any way that would result in the fullest information and a satisfactory settlement; that no further reply was received from complainant or his counsel, but that this suit was filed.

Third. In answer to the eighth paragraph of complainant's bill, defendant denies that said account is inaccurate, or that any of the

fees collected have been omitted therefrom, and states that neither the complainant, nor any representative of his has ever sought information from him concerning same, nor stated any such objection as alleged, or inspected the books and accounts as invited so to do.

And in further answer defendant states, that no retainers were mentioned in said account, for the reason that most of said retainers are according to the contracts between said Earle, and the claimants by him represented, to be deducted from the fees, thereby being returned to the parties who paid them; and for the further reason that by the terms of paragraph five of said contract, between the late William E. Earle and Thomas E. Waggaman, the subject of retainers is not to be considered until final settlement between the parties thereto.

15 The defendant further denies the allegations in said paragraph contained, concerning the disbursements stated in said account.

Fourth. In answer to the ninth paragraph, the defendant says that the allegations contained therein are wholly false and untrue, and avers the fact to be that he offered to adjust any matters of difference between the parties to this action, in any manner that may by the complainant herein, or his counsel be suggested.

And in further answer defendant submits that he is now, and at all times has been ready and willing to do whatever may be necessary in the premises.

Wherefore, having fully answered, defendant prays that the bill be dismissed and that he may go hence with his proper costs.

HENRY M. EARLE,
Administrator d. b. n. c. t. a. of William E. Earle.

JOHN C. GITTINGS,
JOHN J. LORDAN,
Solicitors for Defendant.

DISTRICT OF COLUMBIA, *ss:*

I, Henry M. Earle, being first duly sworn according to law deposes and says: I have read the foregoing answer by me subscribed as administrator, and the facts therein stated as true are personally known by me to be true, and those stated upon information and belief I believe to be true.

HENRY M. EARLE.

Sworn and subscribed to before me this 2nd day of March, 1901.

JOHN R. SHIELDS,
[SEAL.] *Notary Public, D. C.*

16 *Replication.*

Filed April 26, 1901.

Supreme Court of the District of Columbia.

THOS. E. WAGGAMAN, Adm'r, &c., *vs.* HENRY M. EARLE, Adm'r, &c. } Equity. No. 21962.

The complainant hereby joins issue on the answer of the defendant.

IRVING WILLIAMSON,
Solicitor for Complainant.

Order Referring Cause to Auditor.

Filed April 20, 1901.

In the Supreme Court of the District of Columbia.

THOMAS E. WAGGAMAN, Administrator *de bonis non* with the Will Annexed of James H. Causten, Deceased, *vs.* HENRY M. EARLE, Administrator *de bonis non* with the Will Annexed of William E. Earle, Deceased. } Equity. No. 21962.

On motion of counsel for the complainant, with consent of counsel for the defendant, it is this 20th day of April A. D. 1901, ordered that this cause be and the same is hereby referred to the auditor of this court with directions to state an account between the complainant and the defendant upon the pleadings and such proofs as may be produced before him.

By the court—

A. C. BRADLEY, *Justice.*

I consent to the above:

JOHN C. GITTINGS,
Counsel for Defendant.

17 *Report of Auditor.*

Filed November 13, 1902.

In the Supreme Court of the District of Columbia.

THOMAS E. WAGGAMAN, Administrator of James H. Causten, Deceased, Complainant,
vs.
HENRY L. EARLE, Administrator of William E. Earle, Deceased, Defendant.
} No. 21962. Equity.

This cause is referred to me to state the account between the parties. After due notice, I proceeded with the reference and return herewith the testimony, vouchers and exhibits submitted in proof.

The bill of complaint in this cause is based upon a certain contract made between the said Thomas E. Waggaman, as administrator and the said William E. Earle, bearing date of the 12th of June 1885. This contract recites that at its date the said Earle was in possession of the books, documents, papers and records relating to the French spoliation claims of which James H. Causten died possessed, and that the said Earle desired to continue in the custody thereof for use in the prosecution of said claims. The contract then provides that said Earle should have the custody and charge of the said papers &c. and the exclusive use thereof, with certain privileges not material here. The contract provides that true books of accounts should be kept by Earle of all retainers and fees received and of all expenses attending the prosecution of the said claims, said books to be opened at all times to the inspection of the said Waggaman, administrator, or his successor in office. In consideration of the use of the said books and records, it was agreed that Earle
18 should pay to Waggaman, administrator or his successor, twenty-five per cent. of all fees received after deducting the proper expenses incurred by him in the prosecution of claims, such as clerk hire, printing, office rent, advertising and the compensation of other attorneys necessarily associated with him, the settlements between the said Earle and Waggaman to be made every six months, and the part of said fee due said Waggaman to be paid over to him or his successor at such settlements.

By congressional action the French spoliation claims, as they have always been termed in the history of the matter, were referred to the Court of Claims, and they were there prosecuted. After hearing in that court, findings of the court were made in a large number of the cases in favor of the claimants and transmitted to Congress for appropriation. By an act passed on the 3rd of March 1891 Congress appropriated the several sums of money found to be due the claim-

ants by the Court of Claims in a number of the said cases, including cases prosecuted successfully by the said Earle; and with a few exceptions the sum- so appropriated to these cases were collected and the fees received by Earle, entirely in some of the claims and partially in others, it appearing that in many cases Earle was associated with counsel procuring claims for prosecution or by arrangement with the claimants was required to associate with himself other counsel in their prosecution and in these cases the gross fee earned was necessarily divided between Earle and the other parties. A full list of the fees received by Earle in the said cases will be found in Schedule B herewith, showing those cases in which Earle received the entire fee and the cases in which and the manner in which the gross fee was diminished or divided in such manner as to leave him only a part of the fee.

19 It will be noted that the schedule contains a description of claims in connection with which no fee is stated. The explanation appears in the schedule. In some of these cases the requirement of Congress or of the court as to identification of parties entitled to receive the fund has not been complied with, and therefore the claim has not been collected. In other cases the names appear in this schedule with the notation "Not Earle's case." The names appear in this schedule for the reason that counsel for the complainant at the beginning of the reference filed a schedule or list of claims produced from the records of the Court of Claims in which these names appear, but it is sufficiently established that Earle never had any connection with these claims as attorney or otherwise.

Subsequently other claims were prosecuted by Earle in the Court of Claims, and findings had which were transmitted to Congress as before for appropriation. Several efforts were made by Earle during his lifetime, and by his representatives after his death, to procure an appropriatiou for these claims and findings but without success until the act of Congress passed on the 3rd. of March 1899, when a second appropriation was made to cover the second batch of findings transmitted by the Court of Claims.

In the meantime, on the 13th of August 1894, the said William E. Earle died testate, and the will being admitted to probate and record, letters testamentary were issued to Mary Orr Earle, as executrix. On the 23rd of November 1894 the said executrix made a contract with Henry M. Earle to continue the prosecution and collection of the said claims, with authority to retain and associate other attorneys with himself in the said prosecution and collection of said claims or the interest therein of the said William E. Earle, or his

20 estate. On the same date the said Henry M. Earle executed a contract with William T. S. Curtis and Theodore J. Pickett of Washington, whereby the said Henry M. Earle and the said Curtis and Pickett agreed to continue the prosecution and collection of the French spoliation claims and the interest of the said Earle therein, and that as to such of the said claims as, prior to the

date of this contract, had been reported by the Court of Claims to either house of Congress for appropriation, the said Curtis and Pickett should receive from the net fees that would be payable to the said William E. Earle were he alive, or to his estate, thirty per centum, to be equally divided between them, and as to such of the said claims as had not been so reported the said Curtis and Pickett were to receive fifty per centum of the net fee or fees that would be payable to the said William E. Earle, if alive, or to his estate, the said fifty per cent. to be equally divided between the said Curtis and Pickett.

Under the appropriation of March 3rd. 1899 sundry fees have been collected and received by the estate of the said William E. Earle, as enumerated in Schedules C. and D. herewith, to which, as regards the receipt of the whole or part of the gross fees, the remarks made herein as to Schedule B. would equally apply.

An account was presented in this reference purporting to be a statement of all fees collected by the said William E. Earle, and by his estate after his death, together with a detailed statement of costs and expenses incurred in the prosecution of the said claims, for which credit is claimed by the said estate in this accounting. Objection is made to a number of these claims for credit, especially to the expenditure for rent, some of the items for advertising and to a considerable claim of credit for payments to Innis N. Palmer
21 for services rendered as translator. I do not find these objections sustained upon reference to the provisions of the contract and the proof as to these expenditures. The office space for which rent was paid was evidently needed for the transaction of the business in connection with these claims, and the other expenses were largely in the discretion of Mr. Earle as to their necessity and reasonable character of the cost. Many of the records necessary for use in the prosecution of these claims were in a foreign language and their translation a matter of necessity in preparing the cases for submission to the court. General Palmer was a noted linguist and rendered these services, and I do not find that the amounts paid therefore have been beyond a reasonable limit.

Among the claims for credit are some of a class which stands by itself, and to these claims a very earnest objection was interposed by counsel for the parties interested and a considerable extent of testimony had been taken on this point. These claims for credit are for moneys alleged to have been paid by Mr. Earle to several parties in efforts to secure from Congress appropriation for the findings of the Court of Claims first transmitted to Congress. These payments aggregate nearly $20,000. while the entire amount of fees received by Mr. Earle under the appropriation act of March 3rd. 1891 was less than $40,000.

One of the objections made in the premises is the want of sufficient proof of these expenditures; and this also applies to a number of other items of credit claimed in the account presented by the defendant. The testimony submitted on this point by the defendant includes that of Mr. Pickett, who was employed by Mr. Earle during

almost the entire period of his prosecution of these claims, and who gives his recollection of the several transactions to which he
22 was, as such employee, a party or witness. He produces and identifies a book kept by or under, the direction of the said William E. Earle during his life, and by his estate afterwards, in which these several items of expenditure appear to be entered under their proper dates. Objection was made to this book upon several grounds, namely; that it does not come within the provisions of law as to the evidence of books or original entry, that they are not books of a merchant, and that the entries are not sufficiently sustained by testimony. Referring to the provisions of the contract, it is stipulated therein that true books of account should be kept by said Earle of all the fees received and of all expenses attending the prosecution of these claims, and that these books should be open at all times to the inspection of the complainant or his successor in office. It is established in proof that these books, such as they are, were kept in accordance with this contract stipulation and were subject to examination or inspection by the complainant or his counsel, and were so examined upon several occasions. While the entries in these books may not be as full and comprehensive as might be desirable to intelligently inform the complainant of the conditions of the business from time to time by mere inspection, I must hold that being kept under the said contract stipulation, they are to a certain extent made evidence here by the said act of the parties to the contract; and, admitting them as evidence in connection with the testimony here, I find the claims so credited for the several expenditures presented by the defendant to be sufficiently established.

There is a further objection to the claims for payment of moneys to the several parties named, for services in efforts to secure
23 the appropriation by Congress of 1891, upon the ground that the employment and payment of parties exclusive for services of that character is contrary to public policy and discountenanced by the courts. On this point I hold that a line must be drawn between the rendition of legal services and those which may be termed the exercise of personal influence or persuasion. In this case some of the parties so employed and paid were lawyers, and it is in proof that by some of them briefs and arguments were prepared and submitted to the several committees of the two houses of Congress having in charge the matter of the appropriation. The claims for these payments I think should be allowed, while the claims for payments for other than legal services should be excluded from allowance, which is the course which I have adopted in this accounting. It is also claimed that the amounts paid for legal services in this respect are excessive, but I think the matter of amount was largely in the discretion of Mr. Earle who was immediately co-versant with the conditions and necessities of the case, and I must presume that he did not willingly pay unreasonable charges in the premises.

There is another feature of this case which is not without its right to consideration here, and that is that no determined effort was made

by the complainant or those interested under him, to secure an accounting from Mr. Earle during his lifetime. While Mr. Earle was in default as to the stipulations of the contract requiring timely accounting and payment to the claimant, the latter is subject to the charge of laches for his delay in the prosecution of his rights, whereby the defendant is deprived of the benefit which might have been realized from the personal evidence of Mr. Earle.

24 Objection is also made to the claims of credit for costs of proceeding against Clark and others; but on examination I hold the defendant entitled to this credit. The proceeding seems to have been in the exercise of a reasonable judgment and the costs and expenditures therein not excessive in view of the necessities and conditions of the case.

A further claim is made in behalf of the defendant which was the subject of additional testimony taken after the reference was first closed. Under the agreement between Henry M. Earle and Curtis and Pickett of November 23, 1894, the defendant claims to have paid the said Curtis and Pickett a sum equal to thirty per centum of the fees received by the estate of William E. Earle under the appropriation of March 3, 1899, amounting to $15,164.78. To this claim vigorous objection was made by the counsel for the complainant and additional testimony here was taken for the purpose of showing what services were rendered by these two gentlemen in connection with the collection of the fees due to William E. Earle or his estate, upon the claims included in the appropriation act of 1899. It will be remembered that as to all of these claims, the cases in the Court of Claims had been prosecuted to conclusion and findings in favor of the claimant by the court, had been transmitted to Congress, prior to the death of William E. Earle. All subsequent services rendered in relation to these claims were in the direction of securing from Congress an appropriation of the sum necessary for their payment. There was one additional class of work imposed upon the attorneys for the complainant in relation to some of the claims, that is to say the necessity of satisfying the Treasury Department of the identity of the claimants or parties entitled to receive the money. The said Henry M. Earle represented the estate of the said William E. Earle to a certain extent in the making of

25 the said contract with Curtis and Pickett and himself and by the said contract agreed in conjunction with the said Curtis and Pickett to continue the collection of these claims and of the interest of the estate of William E. Earle therein. So that we have three competent attorneys engaged in the work of endeavoring to secure from Congress an appropriation for these claims.

After a very careful consideration of the conditions as they appear in the proof, I am of the opinion that the service in question, did not require the time and attention of these three gentlemen, and that it would not be just to impose the burden of the payment to them upon this case in such manner as to diminish the small fund which will be found due and payable to the complainant. Mr.

Henry M. Earle acting as the attorney for the estate would have been competent alone to have performed the service in question, but clearly it could have been performed with the co-operation of one of the two other parties to the contract. I have therefore in the accompanying account allowed credit for one-half of the said thirty per centum which is in my judgment a liberal allowance for the present accounting.

In the first account presented here by the defendant credits are claimed for "retainers returned." These retainers were certain sums advanced by the claimants to Mr. Earle for expenses with an agreement that when the claims were collected the retainers should be returned. It is evident that unless the defendant is charged with the receipt of the retainers no credit should be given for their return.

This reference has occupied a very considerable amount of time, the issues raised being of very considerable importance and very thoroughly and ably presented by counsel on both sides in oral argument and in memoranda and briefs presented. The re-
26 sult of my conclusions will be found in "Schedule A" herewith, made up in part from "Schedules B., C. and D." as to the fees collected, and upon the proofs furnished as to the credits claimed.

JAS. G. PAYNE, *Auditor.*

27 SCHEDULE A.

The Estate of William E. Earle in Account with Thomas E. Waggaman, Administrator.

DR.

To fees received by William E. Earle under appropriation of March 3, 1891 as per Schedule B.....		$38,745.70
To fees received by the estate of William E. Earle under appropriation of March 3, 1899, as per Schedule C.....		32,431.54
To fees received by the estate of William E. Earle under the appropriation of March 3, 1899 as per Schedule D.....		15,745.10
Received by the said estate in settlement with Geo. S. Boutwell and Geo. A. King of claims included in the appropriation of March 3, 1899.....		2,000.00
		$88,922.34

CR.

By paid Stewart and others under award of arbitrators.....	$793.62	
" paid one-half of arbitrators' fees.....	500.00	
" paid Curtiss and Pickett for services in claims under appropriation of March 3, 1899.....	7582.39	
(Amounts carried forward).....	$8876.01	$88,922.34

28 Schedule A.

Account continued.

(Amounts brought forward).....	$8876.01	$88922.34
Cr.		
By office rent from August 1, 1885, to August 1, 1893.....	3448.17	
" paid Wm. T. S. Curtiss.....	6150.00	
" paid J. T. Pickett.....	10400.00	
" paid other office expenses to July 15, 1893.....	18332.15	
" paid office expenses from said date to November 1, 1900.....	1993.39	
" W. T. S. Curtiss for depositions.....	190.00	
" Omer D. Conger & Son for legal services before committees.....	2000.00	
" Philip B. Thompson for same.....	2500.00	
" Dudley & Michener for same.....	2000.00	
" L. B. Clarke.....	700.00	
" costs and expenses in suit against Clarke.....	2133.80	
		58723.52
Net balance of fees.....		$30198.82
Auditor's fees and testimony.....		350.00
		$29848.82
To the complainant twenty-five per cent...	$7462.20	

JAS. G. PAYNE, *Auditor.*

29 Schedule B.

Statement of Fees Received by William E. Earle under Act of Congress Approved March 3, 1891.

Harrison Allman.....	$778.33
Thomas Amory.....	192.80
Francis Amory.....	987.31
Nathan Bond.....	6.24
W. H. Boardman.....	47.17
Benjamin Bussey.....	27.67
John Bradish, not paid.	
Baltimore Insurance Co., " "	
Samuel Brown, " "	

Moses Brown	5.84
Peter C. Brooks	268.33
James Carrie	414.35
John Carrere	12.35
W. W. Corcoran	13.84
John Codman	1,214.18
William Duncan	
Cornelius Durant, not Earle's.	92.84
John Dunlap	2,187.76
Nathaniel Fellows	
	$12,445.60

30 Schedule B (con.).

Brought from preceding page	$12,445.60
David Green	322.80
Nicholas Gilman	2,-30.99
Joshua Hilton	2,004.25
Samuel Hollingsworth	773.57
Jabez Huntington	895.77
Edward Holbrook	525.17
John C. Jones	378.45
Henry Lee, not paid.	172.50
Alexander Mactier	42.67
William Mackey	737.42
Nicholas Ownings	445.92
Beale Ownings	
Thomas Perkins, not collected.	41.67
James Prince	122.16
S. W. Pomeroy	12.36
George W. Riggs	988.75
William Robb	552.50
William Respars	
	$20,500.55

31 Schedule B (con.).

	$20,500.55
Thomas Stewart	1,587.50
Richard Smith	12.36
Comfort Sands	1,317.35
William Stamwood	557.02
Francis Smith	1,558.33
William Smith	83.34
Richard Toppan	232.70
Thomas Tarant	671.49
Israel Thorndike	8.30
Richard Veitch	4,940.50
Abner Wood	179.24

Thomas Willock	935.00
Gabriel Wood	2,307.20
John Wells	13.84
Arnold Wells, Jr	9.68
Arnold Wells	27.66
Marston Watson	1,182.24
Jeremiah Yellot	1,495.04
Crowell Hatch	434.74
Matthew Cobb	218.09
Benjamin Cobb & others	132.03
Daniel Sargent "	341.50
	$38,745.70

JAS. G. PAYNE, *Auditor.*

32 SCHEDULE C.

Statement of Fees Received by the Estate of William E. Earle under the Appropriation of March 3, 1899.

Thomas Amory	$500.00
James Barry	2,125.50
Nathan Bond	67.50
John Cawper	37.16
John Caldwell	2,358.31
F. F. De La Roche	2,787.75
Edward Durant	474.25
Nathaniel Fellows	985.77
Nicholas Gilman	291.44
John Granberry	21.70
Benjamin Homer	185.88
Samuel Meeker	150.05
John Proudfit	1,737.75
Thomas Stewart	1,515.48
John Storer	2,642.00
Wm. L. Sontag	6,172.12
Thomas Willock	34.69
	$22,087.35

33 Schedule C.

	$22,087.35
James Gardner	1,208.48
Chandler Price	106.47
James Carson	204.00
William McDonald	588.20
Adam Tunno	2,540.13
John Turnbull	84.20

W. H. Boardman	166.67
Philip Besson	1,931.66
William Davis	82.66
David Green	187.50
Daniel Jackson	297.25
John C. Jones	183.33
William Leach	298.16
Nathan Leach	10.50
Josiah Obear	113.71
Samuel W. Pomeroy	195.29
	$30,285.32

34 Schedule C.

	$30,285.32
Joseph Rodgers	144.44
William Smith	166.67
Israel Thorndike	83.64
Arnold Wells, Jr.	90.33
John Wells	66.66
Peter C. Brooks	1,593.41
	$32,431.54

JAS. G. PAYNE, *Auditor.*

35 SCHEDULE D.

Statement of Fees Collected from the Receivers in Cause No. 20,409, *Equity, Being for Claims Included in the Act of Congress of March* 2, 1899.

Claim of—

James A. Buchanan	$537.83
W. B. Buchanan	4,283.56
Isaac Causten	57.17
John Carrere	1,370.24
John Cornwell	1,005.67
Cumberland Dugan	175.00
Charles Ghequiere	449.08
John Hillen	114.33
John Hollins	1,460.90
John Holmes	1,415.26
Alexander McKim	174.69
William McCreery	114.33
Henry Payson	57.17
William Patterson	1,270.88
	$12,486.11

36 Schedule D (con.).

	$12,486.11
Samuel Smith	1,323.96
Henry Schroeder, not collected.	
William Van Wyck	702.91
Samuel Williams	184.75
Benjamin Williams	192.26
Joseph Williams	202.07
Joseph Young	653.04
	$15,745.10

JAS. G. PAYNE, *Auditor.*

37 WAGGAMAN *vs.* EARLE.

TUESDAY, *June* 11, 1901—10:30 a. m.

Hearing pursuant to notice.

Present: Mr. Irving Williamson, Mr. S. T. Thomas, and Mr. W. J. Miller for the complainant; Mr. Gittings for the defendant.

Mr. Thomas offers in evidence the original contract between Thomas E. Waggaman, administrator *d. b.* c. &c., and William E. Earle, bearing date of June 12, 1885, in regard to the use of the Causten papers, approved by the orphans' court, Judge Hagner. Marked Complainant's Exhibit No. 1.

FRED C. KLEINSCHMIDT, having first been duly sworn, testified as follows.

By Mr. THOMAS:

Q. You are employed where, Mr. Kleinschmidt? A. I am file clerk in the Court of Claims.

Q. I wish you would look at this document, being a list of about 236 French spoliation cases in the Court of Claims and state whether at my request you made that list or not? (Handing witness paper.) A. Yes sir; that is the list made by Mr. Harner and myself; he did the typewriting; he is my associate at the Court of Claims.

Q. From what was that list made? A. It was made from the docket of the court and the records of the findings in the French spoliation cases.

Q. And this list shows the number of the case, the name of the claimant, and the amount of the judgment of the findings? A. Yes, sir.

38 Q. Whose cases were these? A. Those were Mr. Williams E. Earle's cases.

Q. Were they all his cases? A. All embraced in that list were Mr. Earle's cases when they were decided.

Q. Do you mean all of those cases? A. Yes sir; decided and certified to Congress prior to March 3, 1899.

Mr. THOMAS: I offer this list in evidence.

Mr. Gittings objects to the paper as not being competent proof, and, after discussion, the auditor suggests that the paper might be accepted and filed as showing certain entries in the dockets of the Court of Claims, that is to say, the number, name of the claimant, and the amount of the judgment.

Mr. Gittings withdraws his objection to the admissibility of the paper in connection with the testimony of Mr. Kleinschmidt, and it is filed and marked Complainant's Exhibit No. 2.

Cross-examination.

By Mr. GITTINGS:

Q. You say this paper was made up from data you furnished your associate? A. Yes, sir.

Q. Do you know whether or not it is correct? A. It is as correct as it can be, sir; it is very accurate, although it is not certified by the court; the only thing missing is attestation by the court.

Q. What I mean is this, did you go over it afterwards to ascertain whether it was correct or not? A. Yes sir.

39 Q. You say this contains the findings of the court and the amount that was certified to Congress for appropriation? A. Yes, sir.

Q. This does not show whether or not the appropriation was made for these claimants, does it? A. No, sir; it does not.

Q. Is there anything on this account that will show that these appropriations were made by Congress? A. On that account?

Q. On this account. A. No, sir.

Q. In other words, it is simply a record of the docket showing the findings in the Court of Claims in the cases in which William E. Earle appeared as attorney of record? A. Yes, sir.

Q. You do not know whether other attorneys appeared with William E. Earle before the Court of Claims? A. No, sir.

Q. There is nothing on file showing that? A. No sir; not to my knowledge.

Q. There is nothing on file to show whether or not other attorneys were interested in these claims? A. I notice in some of these cases (examining list) I have marked below the case the name of F. P. Clark, and there may be one or two more who came in after the case was certified to Congress.

Q. They came in after Mr. Earle's decease by order of the

40 court? A. Yes, sir.

Q. I see one here, No. 386, "J. M. Wilson substituted in 1899." A. Well, the list shows all those. There was Mr. Wilson, Mr. Clark and Mr. J. E. Semmes of Baltimore. Messrs. Curtis and

Pickett. I do not remember them all now, every substitution appears on that list.

Q. Where there is more than one attorney in a case before the Court of Claims the court only recognizes one attorney do they not? A. They only recognize one attorney, as, for instance, take the firm of King & King, they are only recognized as one person, or firm.

Q. Take this for example, say Mr. Thomas, Mr. Williamson and myself appearing for a claimant, only one of us could appear as counsel of record in the case? A. That is true; yes, sir.

S. T. THOMAS, having first been duly sworn, testified as follows: I have compared this list with the appropriation bills by Congress for the payment of findings of the Court of Claims in French spoliation cases and have checked on the margin in red ink the claims allowed under the act of 1891, which will be found in the 27th volume of the Statutes at Large, page 897 and along there. Those checked in lead pencil will be found in the act entitled "An act for the allowance of certain claims for stores and supplies reported by the Court of Claims under the provisions of the act approved March 3, 1883, and commonly known as the Bowman act, and for
41 other purposes," approved March 3, 1899. I file a copy of this act.

Marked Complainant's Exhibit No. 3.

I also offer in evidence the record and proceedings in equity cause No. 20409, in the supreme court of the District of Columbia between Henry Earle, administrator &c. against John Stewart and others, for the purpose of showing French spoliation claims in connection with Mr. Earle that were in litigation in that case.

By Mr. THOMAS: We now call upon the defendant to produce the fee agreement between the late William E. Earle and the claimants named in this list (Compl't's Ex. 2) as checked with lead pencil and with red ink.

Mr. GITTINGS: That is, the ones appropriated for under these two acts?

Mr. THOMAS: Yes, sir.

Hearing adjourned until Monday, June 17, 1901: 10 a. m.

WAGGAMAN
vs.
EARLE.

TUESDAY, *June* 25, 1901—10:30 a. m.

Hearing pursuant to adjournment.

Present: Messrs. Thomas, Irving Williamson, William J. Miller and Mr. Gittings.

THEODORE J. PICKETT, having first been duly sworn, testifies as follows:

By Mr. GITTINGS:

Q. You are a member of the bar of the District of Columbia? A. Yes, sir; and also a member of the bar of the Court of Claims.

Q. State what your connection with the firm of William E. Earle was prior to his death, in relation to these first claims?

42 A. I was in Mr. Earle's office, a part of the time as clerk, and was afterwards associated with him as counsel.

Q. While you were there who kept the books of Mr. Earle? A. I did.

Q. What became of the contracts that were in Mr. Earle's possession, and their names? A. We have those contracts in our possession now.

Q. Whom do you mean by "we"? A. Mr. Curtis and myself.

Q. Now I hand you a list of cases in controversy between Mr. William E. Earle and the claimants in this cause, marked Complainant's Exhibit No. 2; state whether you have examined that list and whether you have the contracts? A. (List handed to witness.) I have examined this list and I have such of the contents as I could find; some of them have been mislaid, and there are one or more of them in which I have a distinct recollection of never having seen even in Mr. Earle's lifetime.

Q. Have you the contracts from the *ines that* in your possession? A. Yes sir.

Q. State whether or not any contracts were in the physical possession of Henry M. Earle as administrator? A. All the papers were left in the possession of myself and Mr. Curtis; he never had any of the papers relating to these claims.

Q. These are the contracts are they? (Showing witness bundle of papers.) A. Yes sir. In a number of cases mentioned in that list you have, Mr. Earle had no contract with the original

43 claimants, his agreement being with the associate counsel; as a matter of convenience they have always been designated as "Baltimore cases," "South Carolina cases," "Florida cases" and some others which do not occur to me at present; there were several other cases of the same kind.

Q. Now, taking this list we will take the act of 1891 first, case 3543 of John C. Jones $1500—— —. I haven't that in my memorandum of the act of 1891; I did not put down the number of the case.

Q. Have you got that case? A. I have got the case of John C. Jones.

Q. Have you the contract? A. No sir; that is a case in which Shellabarger & Wilson and the late Samuel Stevens were the attorneys together with William E. Earle. All those contracts are in the possession of A. A. Hoehling, Jr., executor of Samuel Stevens, who is now in Europe; they never were in the possession of Mr. Earle although his name is mentioned in the contract.

Q. Are you familiar with the contents of those contracts? A. Yes, sir.

Q. What is the amount of the fee in the contract in the Jones case? A. The fee in the Jones case was 15 per cent. where he had claims as the underwriter in the office of Peter C. Brooks. Where he had similar claims in the office of Joseph Taylor the fee was 50 per cent. Peter C. Brooks and Joseph Taylor were the keepers of underwriters' offices in Boston in the days in which these claims arose, and John C. Jones was one of the underwriters in their offices.

44 The reason that there was a fee of 50 per cent. in the Taylor office was that the case had been taken in the Brooks office at the low figure of 15 per cent., and as his claims were not considered large in the Taylor office it was recommended that the fee there should be 50 per cent. so as to average it up. I make this statement for the reason that 50 per cent. is a large fee in these cases and I know of no other case in which there was such a fee; it is very often less than half of that.

Q. Do your books show the net amount that came in the hands of William E. Earle under that contract? A. Yes.

Q. State what it is? A. Under the act of 1899?

Q. Under the act of 1891, the Jones case. Were there other appropriations for Jones in 1891 other than $500? A. Yes, sir; there was this appropriation for Jones 1891.

Q. State the net amount of those appropriations that came into the hands of William E. Earle? A. Under the act of 1891, brig Fortune, Tuck, $1500; ship Accepted Mason, Delano $640; brig Mary, Choate, $500.; schr. Phœnix, Babson, $1,000; brig. Sally, Cruft, $500; brig *B*eneral Wayne, Allen $509.40. If the auditor wishes I can also give the number of the case in the Court of Claims.

The AUDITOR: It is just as counsel desire as to that.

The WITNESS: All those cases which I have just mentioned were cases in Brooks' office in which the fee was 15 per cent. Under the act of March 3, 1899, John C. Jones received three appropriations, schr. Amory, Oliver $300; ship Hettie Jane, Neill, $500; those two were in the Taylor office—brig Bettie Bradish, $1,000. in the Brooks office.

45 By Mr. GITTINGS:

Q. Now, Mr. Pickett, you have stated the fee here 15 per cent.; what was Mr. Earle's portion of that? A. One-third, and one-third of the fifty per cent. also about which I explained.

Q. State whether or not you and Mr. Curtis had any interest in that claim? A. Yes, we had an interest in the appropriation made under the act of 1899, not under the act of 1891.

Q. Take the case of Marston Watson? A. Which act?

Q. 1891. A. Marston Watson appears under the act of 1891 with three appropriations.

Q. State what they were? A. They were the schr. Industry, Hawkes, $6,555; schr. Phœnix, Babson, $10,846.57; ship Eliza, Odell, $332.

Q. Have you the contract? A. I have not. That is one of the contracts which we designate as a Shellabarger, Wilson and Stevens case; it involved William E. Earle and Samuel Stevens.

Q. What is the amount of the fee in that contract if you know? A. I have not got in on this list, but I can state what it is by referring to this book. (Indicating small ledger.)

Q. State what it is? A. Twenty per cent.

Q. And one-third went to Mr. Earle? A. Yes, sir.

Q. Now, the case of Nathaniel Fellowes? A. Nathaniel Fellowes, $1,000 under the act of 1891,——

46 Q. How many? A. Each number, or each amount—the several names of the ships. *A.* Schr. Industry, Hawkes $1,000; ship Accepted Mason, Delano, $700; brig Fortune, Tuck $1,000; brig Mary, Choate $500; schr. Neutrality, Gray, $600; brig. Marcus, Miles, $210; schr. Phœnix, Babson, $2,000; brig. Sally, Cruft, $3,000; ship Speculator, Billings, $1,433.75; brig Ruby, Bartlett, $1,000; ship Eliza, Odell, $664; brig. General Wayne, Allen, $1,018.80. I have the contract here relating to the Nathaniel Fellowes case.

Mr. THOMAS: Let us see it.

Witness produces contract.

The WITNESS (referring to answer to question on page as to whether he and Mr. Curtis had any interest in the claim of John C. Jones): I meant Mr. Curtis and myself succeeded Mr. Earle. Mr. Curtis and myself have no interest in any of these claims under the act of 1891 because Mr. Earle was then alive and conducting his own business. I had a contingent interest in the bills passing through my hands.

I will also state that Mr. Fellowes' case is one in which Mr. Earle is attorney alone and the fee is 25 per cent. but there was a rebate of one-third to Mr. Williamson, an attorney of Boston, Massachusetts.

The witness produces the contract.

Q. Take up the case of Peter C. Brooks? A. Peter C. Brooks received an appropriation under the act of 1891. I have them all added up on this book (referring to small ledger previously mentioned), but I have not got them on the memorandum, or I can read them all by item.

47 The AUDITOR: I suppose counsel wants the names in each case.

The WITNESS: Schr. Industry, Hawkes, $3,000; schr. Delight, Curtis, $4,000; brig Fortune, Tuck $2,000; brig Mary J. Choate, $500; ditto $500; ditto $500; ditto $500; ditto $500; ditto $500; schr. Neutrality, $600; schr. Neutrality, $600; brig Marcus, Miles $1201; schr. Phœnix, Babson, $2500; brig Mary, Ross, $5460; brig Sally, Cruft, $9900; ship Farmer, Freeman $1850; ship Speculator, Billings, $867.50; schr. Elizabeth, Trott, $1600; brig. Ruby, Bartlett, $2,000; ship Eliza, Odell $2739; brig General Wayne, Allen, $3456.40.

Q. Is that all? A. That is all under the act of 1891.

Q. Have you the contract? A. I have.

Q. Produce it please? A. (Witness produces contract.) (Continuing:) That is a case also in which Shellabarger, Wilson and Stevens are interested.

By Mr. GITTINGS:

Q. State the amount of the fee and the net interest of Mr. Earle in it. A. Mr. Earle's interest in that case was either two-thirds or one-half; I am not positive at this time. (The witness states that he will produce the contracts with Messrs. Shellabarger, Wilson and Stevens if they are in his possession.)

Q. The case of James Prince. A. There was an appropria-

48 tion under the act of 1891 for the estate of James Prince on the schr. Phœnix, Babson, $500. That was a Shellabarger, Wilson & Stevens case; Mr. Earle's interest in it was one-third; the fee was 25 per cent.

—. Cornelius Durant? —. The claim of Cornelius Durant was one in which Mr. Earle was not the attorney.

Q. He was not the attorney of record? A. No, sir.

Q. Had he any interest in it? A. I think Mr. Earle did have an interest in that; but it was a matter of no moment as the amount has never been collected.

Q. Do you know why? A. The act of March 3, 1891, provides that the Secretary of the Treasury shall pay only on the certificate of the Court of Claims to the party in whose favor the appropriation is made, or those representing the next of kin of the original decedent; the next of kin of Cornelius Durant has never been found.

Q. Take the case of Thomas Stewart? A. Thomas Stewart received an appropriation under the act of 1891 on the ship Theresa, Brown, of $6,350. I have in my possession the contract.

Q. Produce it? A. (Witness produces the contract referred to.)

Q. What is the amount of the fee? A. The amount of the fee is 25 per cent.

Q. What was Mr. Earle's interest in that fee? A. (Examining ledger.) Nobody appears but Mr. Earle; he has all the fee.

49 Q. Samuel Hollingsworth? A. Samuel Hollingsworth received an appropriation under the act of 1891 on the schr. Little Peg, Auld, $5,960.50 schr. Two Brothers, Fry $2,384.57 and the schr. Nancy, Black, $1,969.12. The fee was 25 per cent., Mr. Earle received one-half thereof; I have not the contract exactly, but have letters from Messrs. John and David Stewart who got the case which show the claims taken to Mr. Earle; I produce those letters. (Handing to counsel.)

Q. State whether or not that comes under the contract with the Baltimore attorneys? A. I think not; it was one of the cases secured by Messrs. Stewart, as I understand, prior to the arrangement between Mr. Earle and the gentlemen whom we designate as the Baltimore associates.

Q. William Resspass? A. He received an appropriation on the Nancy Black, of $2,210. The fee was 25 per cent. I have the contract which I produce.

Q. What was Mr. Earle's net fee in that case, if you know? A. Mr. Earle was the sole attorney and got all of the fee.

Q. Comfort Sands? A. Comfort Sands received an appropriation on the ship Light Horse, Hoff master, $7,318.66. I have the contract and produce it. The fee was 25 per cent. on which there was a rebate of 7 per cent. to Mr. Bayliss, a lawyer of New York who secured the case, leaving Mr. Earle's net fee 18 per cent.

—. Joshua Hilton? A. Joshua Hilton received an appropriation on the ship Accepted, Mason, of $8,017. The contract if one

50 has ever been formally entered into has been lost. I produce, however, original memoranda in the handwriting of Mr. Earle, showing what the fee was; it was made at the time I was a clerk in Mr. Earle's office; I assisted him in those matters and I know it to be correct. The fee was 25 per cent.

Q. Is that net to Mr. Earle? A. Mr. Earle was the only attorney in the case.

Q. Samuel Brown? A. Samuel Brown received an appropriation under the act of 1891, but he declines to accept it on the proviso as to next of kin attached to the appropriation act and the amount, therefore, has never been collected and is still in the Treasury to his credit. I have the contract; I can produce it if wished and I can state the amount of it.

Q. Was that the only appropriation for him in which Mr. Earle was interested? A. He has one other appropriation amounting to over $10,000 in which Mr. Earle has no fee, and which also Mr. Brown has declined to draw from the Treasury. The contract is here if you wish it.

Mr. THOMAS: Let us see the contract.

The WITNESS: I produce the contract. Mr. Brown has much

more outstanding than he has received an award for at the late term of the Court of Claims if they succeed in getting other awards for other claims for him.

By Mr. GITTINGS:

Q. Thomas Amory? A. Thomas Amory received two appropriations under the act of 1891, to wit, brig Sally, Cruft, $300; ship Eliza, Odell, $664. I have the contract and produce it. Mr. Earle is the only attorney in that case.

Q. I notice, in Complainant's Exhibit No. 2, case No. 3439, an appropriation of a thousand dollars—— A. Thomas
51 Amory?

Q. Yes. Is that correct? A. Yes; but not under the act of 1891. I notice there is an error there,—the appropriation under the act of 1891 as given by me above. The appropriation of the one thousand dollars was under the act of 1899, and there were two appropriations under the last named act.

Q. William Mackay? A. William Mackay received an appropriation under the act of 1891 on the brig Mary, Choate, $500. This is one of the Shallabarger, Wilson & Stevens cases. The fee was 25 per cent.; Mr. Earle's interest was one-third.

Q. Nicholas Ownings? A. Nicholas Ownings—that was an appropriation under the act of 1891 of the brig Two Sisters, $5,638.25 and the schr. Sisters, Bradish, $682.50. This is a Baltimore case; the fee was 33⅓ per cent.; Mr. Earle was to have one-half. None of these Baltimore contracts for fees were in the possession of Mr. Earle to my knowledge; I have, however, an original memorandum by Mr. Earle showing what his fee is, and I produce it; it is in his handwriting with which I am perfectly familiar and the time when it was made.

Q. Have you the copy of the contract with the Baltimore attorneys? A. Not in my possession, not here with me, but I will produce it.

Q. Jeremiah Yellot? A. Jeremiah Yellott received an appropriation under the act of 1891 on the schr. James, Gunnell, $7,176.34 and the brig Two Sisters, Hubbart $5,638.25. This was a Baltimore case; the fee was 33⅓ per cent.; Earle received one-
52 half. I have no contract or no memorandum relating to it.

Q. Alexander Mactier? A. Alexander Mactier received an appropriation under the act of 1891 on the ship Triumph, McConnell, $2,300. This is a Baltimore case; the fee is 25 per cent.; Mr. Earle received one-half of it. I produce the original letter from Mr. Frank P. Clark dated May 1, 1891, transmitting to Mr. Earle his fee.

Q. James Carrie? A. James Carrie received an appropriation under the act of 1891 of $2,300. This also is a Baltimore case; the fee was 33⅓ per cent. I produce a letter of David Stewart of the firm of John and David Stewart to John Carrere, who were the Baltimore association, transmitting to Mr. Earle his fee. In this letter

is also included the John Carrere case, which is also a Baltimore case and also mentioned in that list I assume, for which there was an appropriation on the brig Mary, Boyle, $2207, and on the schr. Eutaw, Smith, $1344.50. The fee was 33⅓ per cent., and is transmitted by Mr. David Stewart in the letter above referred to and including both the cases.

Q. Thomas Tuckerson? A. Thomas Tuckerson you will find marked on that exhibit there as one of the appeal cases.

Q. Has Mr. Earle any interest in it? A. I cannot tell whether he had or not; it was one of the Boutwell cases, and Mr. Earle had an agreement with him as to those cases, but I do not find Thomas Tuckerson under it. I will state that Mr. Earle had no tangible interest in that case.

53 Q. Thomas Tenant? A. Thomas Tenant received an appropriation under the act of 1891 on the sloop Cicero, Taggart, of $8,953.18. This is a Baltimore case; the fee is 25 per cent., Mr. Earle's share is one-half, and I produce letter from Frank P. Clark dated April 23, 1891, transmitting to Mr. Earle his fee. That paper attached there (indicating) is in Mr. Earle's handwriting, and it has always been attached to the letter.

Q. Richard Veitch? A. Richard Veitch received an appropriation under the act of 1891 on the brig Virginia, Butts of $19,762. The contract has been mislaid; the fee was 25 per cent.; Mr. Earle was the attorney alone. They have other cases still pending.

Q. W. W. Corcoran? A. W. W. Corcoran. Mr. Corcoran received an appropriation under this act on the brig Virginia, Butts, of $79.00. I do not find the contract. The fee was 25 per cent. and James M. Johnston received from Mr. Earle nine and three-eights per cent. of the award.

Q. George W. Riggs? A. The George W. Riggs case is the same as Mr. Corcoran's; he received exactly the same appropriation under the act of 1891, James M. Johnston receiving 9⅜ per cent. of the award.

Q. Richard Smith? A. My answer is repeated as to the above two cases, each of the three receiving $79.09 from the appropriation. This and the two preceding cases are exactly alike.

Q. William Duncan? A. William Duncan received an appropriation under the act of 1891 on the schr. Lucretia, Grant,
54 of $10,407.27. It is a Baltimore case and the fee was 33⅓ per cent.; Mr. Earle was entitled to one-half, and I produce the original memorandum showing what his fee was; that is all there is of it (indicating); it was made at the time and is in Mr. Earle's handwriting.

Q. Henry Lee? A. Henry Lee received an appropriation under the act of 1891 for the ship Hope, Rogers, of $2432; it was a Baltimore case and has never been collected owing to the failure to establish the existence of any next of kin of the original claimant.

Q. William Smith? A. William Smith received an appropriation under the act of 1891 upon the ship Speculator, Billings, of

$1,000. That is a Shellabarger, Wilson & Stevens case; the fee was 25 per cent. of which Mr. Earle's share was one-third; the contract is in the possession of Mr. Holding.

Q. William H. Boardman? A. William H. Boardman received an appropriation upon the ship Speculator, Billings, of $400 and the ship Eliza, Odell, $166, which is one of the cases described for convenience as a Shellabarger, Wilson & Stevens case. The fee was 25 per cent.; Earle received one-third; the contract is with Mr. Holding as I have heretofore explained.

Q. Samuel W. Pomeroy? A. Samuel W. Pomeroy received an appropriation under the act of 1891 upon the ship Speculator, Billings, of $600 and the ship Eliza, Odell, $166, which is also a Shellabarger, Wilson & Stevens case; the fee was 25 per cent.; Mr. Earle received one-third.

Q. Francis Amory? A. Francis Amory received an ap-
55 propriation for the ship Eliza, Odell, of $12,341.40. That is also a Shellabarger, Wilson & Stevens case. Earle received one-third. I cannot state at this time what the fee was. The contract is in the possession of Mr. Holding.

—. Nicholas Gilman? A. Nicholas Gilman received an appropriation under the act of 1891 on the ship Eliza, Odell, of $332. This case was one either of Shellabarger & Wilson or of Earle and Samuel Stevens. I cannot state with certainty what the fee was. The contract is in the possesison of Mr. Holding. I say what I do about the Gilman case because there appears to be a little confusion about the provision under the acts of 1891 and 1899 as he received appropriations under both and before testifying I wish to see how the matter stands.

Q. John Codman? A. John Codman received an appropriation under the act of 1891 on the ship Eliza, Odell, of $166. That was a Shellabarger, Wilson & Stevens case, but I am not positive as to what the fee was; Early received, however, one-third of it, and I can supplement the answer to this question a few days hence if it is wished.

Q. Israel Thorndike? A. Israel Thorndike received an appropriation under this act of $83 on the ship Eliza, Odell. That also is a Shellabarger, Wilson and Stevens case; the fee was 25 per cent., Mr. Earle received one-third.

Q. David Greene? A. David Greene received an appropriation on the brig Sally, Cruft, $500; sloop Farmer, Freeman, $3,638 and the ship Eliza, Odell, $166. That was a Shellabarger, Wilson
56 & Stevens case; the fee is 25 per cent. There was a rebate of 2½ per cent. to some person in Boston. Earle received one-third of the net fee.

Q. John Welles? A. John Welles received an appropriation on the ship Eliza, Odell, of $166, which also is a Shellabarger, Wilson & Stevens case. The fee was 25 per cent.; Earle received one-third.

Q. Thomas Perkins? A. Thomas Perkins received an appropria-

tion on the ship Eliza Odell, of $166. It is a Shellabarger, Wilson & Stevens case. I have no memorandum showing what the fee is. The amount has never been collected and is now in the Treasury of the United States.

Q. Arnold Welles, Jr.? A. Arnold Welles, Jr., received an appropriation on the ship Eliza Odell, of $332; it is a Shellabarger, Wilson & Stevens case; the fee is 25 per cent. of which Earle received one-third.

Q. Moses Brown? A. Moses Brown received an appropriation on the ship Eliza, Odell, of $66.40. It was a Shellabarger, Wilson & Stevens case. Earle was entitled to one-third of the fee. The memorandum I have here does not state what the fee was, but the contract can be produced.

Q. Nathan Bond? A. Nathan Bond received an appropriation of $83 on the ship Eliza, Odell. This was a Shellabarger, Wilson & Stevens case. The fee was 22½ per cent.; Earle received one-third.

Q. Benjamin Bussey? A. Benjamin Bussey received an appropriation of $332 on the ship Eliza, Odell, it is a Shellabarger, Wilson & Stevens case. The fee was 25 per cent.; Earle received one-third.

57 Q. Abner Wood? A. Abner Wood received an appropriation on the brig Ruby, Bartlett, of $2,150.79. It is a Shellabarger, Wilson & Earle case; the fee was 25 per cent. of which Mr. Earle received one-third.

Q. Jabez Huntington? A. Jabez Huntington received an appropriation of $3,583.09 on the schr. Elizabeth Trott, I have the contract and produce it. The fee is 25 per cent. Mr. Earle was the sole attorney.

Q. John Weatherby? A. That is not one of Mr. Earle's cases.

Q. Did he have any interest in it? A. Not that I know of. John Weatherby is the administrator of Tisdale is he not?

Q. Yes. A. I have not got anything on here.

Q. You say Mr. Earle does appear as the attorney of record? A. Not to my knowledge, and if he had I would have known it.

Q. William Stanwood? A. William Stanwood received an appropriation on the brig Hope, Toppan, of $2,785.11. The fee was 25 per cent. Messrs. Baker, Baker & Cornish received one third of the fee. I find no contract, but I produce original memorandum by Mr. Earle showing the fee. I am acquainted with the firm of Baker, Baker & Cornish and am in correspondence with them now.

Q. State how this memorandum was made up by Mr. Earle
58 if you know? A. When we were getting the warrants for the payments of the appropriation Mr. Earle would take the warrant and figure his fee and transmit the warrant with drafts attached for his fee. This is how these memorandums were made.

Q. In other words, he would attach his draft for the amount of his fee to the warrant and send to the claimant? A. Yes. Most of them were made by Mr. Earle when I was sitting by him assisting

in getting the figures for them. A great many of the figures on these memoranda that have been submitted were made by me.

Q. John Stuart receiver of the Baltimore Insurance Company? A. The Baltimore Insurance Company received two appropriations —brig Mary, Boyle $11,000, schr. Emily W. Emerson, $12,860. That is a Baltimore case, the fee was 25 per cent. and, of course, as explained before I have not the contract, but I produce the letter of Frank P. Clark dated May 1, 1891, transmitting to Mr. Earle his fee. This letter has a memorandum on the back of it of my own made at the time.

Q. John Bradish? A. John Bradish received an appropriation of $3,414.50; it was a Baltimore case; I do not know what the fee is, but it has never been paid and is still in the Treasury of the United States awaiting the proof of the next of kin.

Q. Beale Owings? A. Beale Owings is a Baltimore case; he received an appropriation on the schr. Emily, Emmerson, of $3,822.12; the fee was one-third, Earle received one-half of it. Being a Baltimore case of course the contract is not in my possession, but
59 I produce an original memorandum made by myself at the time showing what the fee was. These cases are all covered by the Baltimore contract anyhow, but in that memorandum we notify the Baltimore parties of our fee.

By Mr. THOMAS:

Q. What was Earle's fee? A. Earle's fee was $637.02.

By Mr. GITTINGS:

Q. Harrison Allmand? A. Harrison Allmand received an appropriation on the schr. Bethia, Lanier, of $3,113.33; the fee was 25 per cent.; I have the contract and produce it.

Q. Francis Smith? A. Francis Smith received a contract on the schr. Bethia, Lanier, of $6,233.33. I have the contract and produce it.

Q. Who were the attorneys in the last two mentioned cases? A. Earle was the sole attorney in both the Francis Smith and Harrison Allmand cases.

Q. Were there any rebates? A. No, unless shown by the contract.

Q. Thomas Willock? A. Thomas Willock received an appropriation on the Bethia Lanier of $6,233.33. I have the contract and produce it; the fee was 25 per cent. There is an original memorandum attached to this contract both in Mr. Earle's handwriting and my own; it shows the fee to have been $1,558.33 of which two fifths went to W. H. Burrows associate attorney, and left a net fee of $925.

Q. William Robb? A. William Robb received an appropriation of $8,475 on the schr. Hero, Hammett. This is a Baltimore case; Earle's fee was $1412.50. I produce an original memoran-
60 dum by Frank P. Clark, dated April 24, 1891, showing the fee.

Q. Charles F. Hunt? A. Well, Earle had an interest in that, although he is not the attorney of record. There were several of these cases in which there was *was* an arrangement between Earle and George S. Boutwell and George A. King, both of Boston. I can testify to the whole of them, but not by item.

Q. Were there any other fees received from Mr. Earle in cases which are not shown by this Complainant's Exhibit No. 2 under the appropriation act of 1891? A. Well, there is the case of John Dunlap, brig Hope, Toppan, an appropriation of $1856.74. Mr. Earle received a fee of 5 per cent. on that amounting to $92.84. There is also the case of Richard Toppan, brig Hope, Toppan; the appropriation was $4,654.11. Mr. Earle received a fee of $232.70 net from the attorney of record. Mr. Earle had a contract or arrangement, mostly verbal although there are some letters referring to it, with Messrs. Boutwell and King; under that he received on the case of Crowell Hatch a fee of $434.74; on the case of Matthew Cobb, $218.09; on underwriters in the Brooks office a fee of $132.03; on underwriters in the Taylor office a fee of $341.50. George S. Boutwell is the attorney of record in the cases under which those fees were paid, and they were paid Mr. Earle as compensation for work he did in the cases.

Q. You have fully stated all the fees that Mr. Earle received under the act of 1891? A. I think so; I do not know of any that have been omitted; I have not checked them here; I have just testified to them as you asked. I do not think any are omitted, but I can tell when I read over my testimony.

61 Hearing adjourned until Tuesday, July 1, 1901—p. m.

TUESDAY, *July* 2, 1901—2 p. m.

Hearing pursuant to adjournment.

Present: Mr. Gittings, for the complainant, Mr. S. T. Thomas and W. J. Miller for the defendant.

Direct examination of THEODORE J. PICKETT continued.

By Mr. GITTINGS:

Q. Mr. Pickett take up the appropriation of 1899 and state whether there is an appropriation for the benefit of Nicholas Gilman and whether you have a contract with Nicholas Gilman? A. Yes; there was an uppropriation under the act of 1899 for the estate of Nicholas Gilman on the schr. Alert, $300, and on the ship Betsy, $198, on the brig Betsy, $1,000. and on the ship Hettie Jane, $1,000. This contract is made between the representative of the estate of Nicholas Gilman and Samuel Stevens and William E. Earle; the fee was 33⅓ per cent. of the appropriation of 1899; $249.80 of the fee was paid to Horace S. Cummings, who was connected with the case and who was instrumental in Samuel Stevens and William E. Earle being retained in the case. The balance of the fee was divided between the estate of Earle and the estate of Samuel Stevens.

Q. Was this a contract in which Shellabarger, Earle & Wilson was interested? A. There appears to be some confusion about that and I really do not know how it stands at this time, but I think
62 under the act of 1891 I have it down as a Shellabarger & Wilson case and under that act it seems that a part of the fee was paid to Shellabarger & Wilson and Samuel Stevens. Mr. Stevens was alive then and there seems to have been some arrangement about which I know nothing so far as that case is concerned; nothing was paid to Shellabarger & Wilson under the act of 1899.

Q. In whose possession is the contract. A. The contract was in the possession of Mr. Hoehling the executor of Samuel Stevens.

Q. Estate of Arnold Welles, Jr.? A. There was an appropriation under the act of 1899 on the Alert, $400, ship Betsy, $36, brig Friendship, $300. This is a case in which Shellabarger & Wilson are also attorneys; the fee was 25 per cent.; the contract of course is in the possession of Mr. Holding.

Q. What was Earle's proportion? A. One-third.

Q. Josiah Obear? A. There was an appropriation to the estate of Josiah Obear on the brig Betsy, Obear master, of $1705.68; the fee was 25 per cent. There was a rebate of 5 per cent. Shellabarger & Wilson were the attorneys also and Mr. Holding consequently would have the contract.

Q. Who was the rebate made to? A. The contract will show, but I think it was made to the administrator.

Q. And Earle's interest was one-third of 20 per cent.; is that correct? A. Yes, sir.

Q. Nathan Leach? A. There was an appropriation to Nathan Leach on the ship Betsey, Obear of $126. The fee was 25 per
63 cent., and it is also of the class designated as Shellabarger & Wilson cases, Earle's fee being one-third.

—. Peter C. Brooks? A. There was an appropriation to the estate of Peter C. Brooks, under the act of 1899 of $21,245.42. This appropriation was not paid under that act for the reason that the Treasury Department held that by the wording of the act the estate was not entitled to it, but there was a subsequent appropriation made covering the said amount under the general deficiency appropriation act of March 3, 1901. The fee was 15 per cent. and I have produced the contract. Shellabarger & Wilson, but not Samuel Stevens were in this case.

Q. Does that include all the claims in which the Peter C. Brooks estate was interested under the act of 1891? A. Under that act, but not all he was interested in.

Q. I mean all that were appropriated for under that act? A. All that were appropriated for.

Q. Can you name the several amounts that were appropriated for the benefit of the estate of Peter C. Brooks under the act of 1899? A. Yes sir; schr. Thankful, $2,000, brig Vulture, $1500, sloop Fox, $400, sloop Nancy $1,000. brig Caroline, $5,402.50, schr. Jane, $2,700;

brig Betsey, $3,000; brig Hiram, $414, sloop Federal George, $2,341.86. schr. Sea Flower, $487.06.

Q. You say that was appropriated for under the general deficiency bill of 1901? A. Yes; paid under that act.

64 Q. Estate of Thomas Stewart? A. There was an appropriation to this estate under this act on the ship Hettie Jane of $6,061.93. I have testified to this case before and have produced the contract.

Q. Estate of William Smith? A. There was an appropriation for this estate under this act on the schr. Thankful and ship Hettie Jane in the sum of $1,000 each; the fee was 25 per cent. and it belongs to the Shellabarger & Wilson class of cases.

Q. Any rebate? A. It does not appear so. (Examining book.)

Q. Benjamin Homer? A. Benjamin Homer received an appropriation on the ship Hetty Jane of $500 and on the schr. Sea Flower of $243.53. The contract appears to be mislaid; I do not have it. We collected 25 per cent. and it is one of the cases in which Mr. Earle appears as sole attorney.

Q. Thomas Amory? A. Thomas Amory received an appropriation on the schr. Alert and on the ship Hettie Jane of $1,000 each. I have produced the contract in my former testimony.

Q. David Greene? A. David Greene received an appropriation on the schr. Thankful and the ship Hetty Jane of $1,000 each, and on the sloop Fox $500, in all $2500. It is of the class of cases known as the Shellabarger & Wilson, and the contract is in the possession of Mr. Holding.

Q. Do you know the amount of the fee? A. The fee was 25 per cent., but there was a rebate of 2½ per cent. of the award.

Q. What would that leave the net contract? A. It left
65 Shellabarger & Wilson, Samuel Stevens and William E. Earle a net fee of $552.62, $180.50 each.

Q. James Scott? A. James Scott was not one of Mr. Earle's cases.

Q. Had he any interest in it? A. Not that I am aware of.

Q. Did the Earle estate collect any fee? A. No, claimed none.

Q. John C. Jones? A. John C. Jones received an appropriation on the Alert, $300 and on the Hetty Jane, $500, on the brig Betsy, $1,000. In this case the fee was 15 per cent. on the cases known as the Brooks office cases to which the brig Betsy belonged, and in the cases known as Taylor office cases the fee was 50 per cent. to which the Alert and Hetty Jane belonged, I have testified on my first examination why the fee was arranged this way.

Q. William H. Boardman? A. His estate received an appropriation under this act on the Thankful, $400, on the Fox, $300, on the Betsy $1,000 on the Endeavor, $300. The fee was 25 per cent, and it is one of the cases known as the Shellabarger & Wilson cases; Earle received one-third of the fee.

Q. John Caldwell's estate? A. This estate received an appropriation of $12,412.17 on the brig Hope, George master; the fee in this case was 25 per cent. of which M. M. Parker received 5 per cent. of

the fee and Francis Parsons one-fifth of Mr. Earle's net fee, these two gentlemen being connected with the case, as shown by the contract which I now produce.

Q. What is the amount of the fee? A. The fee was $3,103.04, of which $155.15 was paid to Mr Parker and $589.58 was paid
66 to Mr. Parsons, leaving a net fee to the Earle estate of $2,358.31.

Q. Nathaniel Fellowes estate? A. This estate received approprations on the Thankful, $1300, on the Hope, $1,000, on the Vulture, $1,000, on the Nancy, $1,000, on the Friendship $700, on the Jane, $500, on the Hiram, $414. I have heretofore testified as to this case and produce the contract.

Q. Samuel Willys Pomeroy's estate? A. This estate received an appropriation on the Hope $1,000, on the Fox, $500, on the Alert, $600, on the Sea Flower, $243.53. This is one of the cases belonging to the Shellabarger & Wilson class, and I have also heretofore testified to this case.

Q. Nathan Bond? A. Nathan Bond received an appropriation on the Thankful, $400, on the Hope $500. This also belongs to the Shellabarger & Wilson class and I have heretofore testified regarding the fee.

Q. William Leach? A. William Leach received an appropriation on the Alert of $3,577.88. The fee in this case was 25 per cent.; it belongs to the Shellabarger & Wilson class and of course the contract is in the possession of Mr. Holding.

Q. Any rebate? A. There does not appear to have been any. Shellabarger & Wilson, the estate of Samuel Stevens and the estate of Mr, Earle each received a fee of $298.16.

Q. Arnold Welles, Sr.? A. Arnold Welles, Sr., received no appropriation under the act of 1899; he did receive an appropriation under the act of 1891; but this "senior" is probably Arnold Welles, "junior" who did receive an appropriation under the act of 1899 and to which I have testified.

67 Q. I hand you now Complainant's Exhibit No. 3; kindly look at the last line of page 40, case No. 4685, and state what appropriation that is? A. The bill itself says Arnold Welles jr., $400, on the schr. Alert, Jacob Oliver master, as I have in this examination previously stated that he did receive such an appropriation.

Q. Charles Ghequiere—state whether or not there is an appropriation for him and whether you have the contract and the amount of it? A. There was an appropriation made to this estate on the ship Juliana, Haywood master, of $3,849.16. It is one of the cases known as Baltimore cases and was included in equity cause No. 20,409 in this court. The contract was in the possession of the Baltimore associates; the fee is carried as 33⅓ per cent.

Q. The estate of John Welles? A. John Welles received an appropriation under this act on the Vulture, $500, and on the Endeavor, $300; it belongs to the Shellabarger & Wilson class, the fee was 25 per cent. of which Mr. Earle's portion was one-third.

Q. Any rebate? A. No rebate.

Q. Smith & Buchanan? A. Smith & Buchanan is one of the Baltimore cases and was included in equity cause No. 20,409. There was an appropriation on the ship Jane of $11,660.21 and on the ship Patapsaco of $25,056; the fee was 33⅓ per cent.

Q. William Van Wyck? A. This estate received an appropriation on the Rosetta of $6,024.96. It also is included in the above referred to equity cause; the fee is 33⅓ per cent.

68 Q. John Donnell? A. John Donnell is also one of the Baltimore cases and appears in equity cause No. 20,409. There was an appropriation on the Patapsco of $6,659.99 and on the Rosetta of $1960; the fee is stated to be 33⅓ per cent., and that amount was collected.

Q. Estate of Joseph Young? A. It also is one of the Baltimore cases; it appears in the heretofore mentioned equity cause. There was an appropriation to this estate on the Rosetta of $5,597.46; the fee was one-third.

Q. James Clark? A. This also is one of the Baltimore cases; there was an appropriation to this estate of $980, but I have no record of this case being paid.

Q. Cumberland Dugan? A. This also is a Baltimore case and there was an appropriation of $1500 on the brig Rosetta; the fee was one-third, and the same has been collected.

Q. William McCrurg? A. This also is a Baltimore case and the estate received an appropriation on the brig Rosetta of $980; the fee was one-third and it has been paid.

Q. Benjamin Williams? A. This also is a Baltimore case; there was an appropriation made on the Rosetta of $980, and on the Eleanor, $1,583.59; it was included in equity cause No. 20,409; the fee was 25 per cent.

Q. Paul Bentalou? A. This also was a Baltimore case and has not yet been collected. I cannot state what the fee will be because the contracts are in possession of the Baltimore gentlemen and

69 have never been paid.

Q. John Hillen? A. This also is a Baltimore case and there is an appropriation on the Rosetta of $980; it is included in the aforementioned equity cause and the fee was one-third, and it has been paid.

Q. Henry Payson? A. This also is a Baltimore case and there was an appropriation on the Rosetta of $490; the fee was one-third.

Q. Isaac Causten? A. This also, is a Baltimore case, and there was an appropriation on the brig Rosetta of $490; the fee was one third.

Q. Were those last cases you named included in the equity proceedings you speak of? A. Yes, sir.

Q. Philip Besson? A. There was an appropriation to Philip Besson on the Hannah of $23,180; the fee was 25 per cent.; it belongs to the Shellabarger & Wilson class of cases.

Q. Any rebate? A. There appears to have been none.

Q. Henry Schroeder? A. There was an appropriation made to the estate of Henry Schroeder on the schr. Phoenix, Cowart master, of $4,427.44. The appropriation was made with this proviso in the bill; "The last above three items to be subject to a deduction of the amount of insurance received, which amount shall be investigated and determined by the proper accounting officers of the Treasury Department." This also is a Baltimore case, but has not yet
70 been paid, the administrator having died and the new one not having received from the Court of Claims a certificate that he represented the next of kin of the original claimant. I had this case up in the Treasury Department on the 21st of last month. The appropriation will finally be paid and he will receive subject to the proviso the sum of $1094.11; being a Baltimore case I do not know what the percentage of the fee is.

Q. Alexander McKim? A. This is also a Baltimore case and he received an appropriation on the confidence of $1497.39; it was included in equity cause 20,409, and the fee of one-third has been paid.

Q. Estate of Samuel Williams? A. This also is a Baltimore case and there was an appropriation on the brig Eleanor of $1583.59; the fee was one-third and it is also included in equity cause 20,409; the fee has been collected.

Q. Estate of Benjamin Williams? A. This is a Baltimore case and an appropriation was made on the brig Rosetta of $980, brig Eleanor, $1583.59; the fee was 25 per cent. and it has been collected.

Q. Francis Johanna? A. That is a Baltimore case and there was an appropriation made on the brig Eleanor of $5,723.18; it has not yet been collected.

Q. Thomas Dickerson, Jr.? A. That is not one of Mr. Earle's cases.

Q. John Storer? A. There was an appropriatien to this estate on the brig Venus of $10,568; the contract appears to have been mislaid, but there was a fee of 25 per cent. paid.

71 Q. No rebate? A. No rebate.

Q. William Patterson? A. That is one of the Baltimore cases and there was an appropriation made on the Betsy of $20,334.16; the fee was 25 per cent. and there was a rebate of 2½ per cent.; it is one of the cases included in equity cause 20,409.

Q. John Granbery? A. There was an appropriation made to John Granbery on the brig Eliza Wright of $109.01; the fee is 25 per cent. and there was paid to R. H. Baker & Son, who were the associate counsel in Norfolk, one-fifth of the fee.

Q. Estate of Francis Smith? A. There was an appropriation made to this estate under the act of 1899 of $118.42 on the Eliza Wright. The administrator of this estate declines to draw the amount as there are other cases pending and he says he prefers to wait until it is worth while to make distribution to the heirs.

Q. John Cowper? A. There was an appropriation made to this estate on the brig Eliza Wright of $148.65; the fee wes 25 per cent. of that amount.

Q. Who was the contract with? A. The contract is with the former administrator, John Neeley; the case is now represented by A. B. Warrington. I produce the contract, and in the case of the estate of John Granbery I also produce the contract.

Q. Thomas Willock? A. There was an appropriation to this estate on the brig Eliza Wright of $138.74. In my examination of some days ago I testified to this fee and produce the contract.

72 Q. Was that under the act of 1899? A. In my testimony of some days since I stated it was under that act; that was when I produced the contract.

Q. There appears to be in case 1584 of Complainants' Exhibit No. 2 an appropriation for Thomas Willock under the act of 1899 of $137.84? A. Thomas Willock received appropriations under both acts of Congress, under the act of 1891—and——

Q. I do not want what he received in 1891? A. What I was going to state is that in my testimony of a few days since I produced the contract with the estate of Thomas Willock; that is what I said; he did receive an appropriation under the act of 1899 of $138.74; there is a transposition of figures therein; that is all.

Q. Estate of William McDonald? A. This case is one of the cases designated by us as the South Carolina cases; there was an appropriation made on the schr. Needham of $4914. The fee to Mr. Earle was 12 per cent. of this amount and now I produce the contract relating to this class of cases.

Q. William L. Sontag? A. There were appropriations made to this estate on the Teresa of $13,537.50; on the Teresa again, $3,264.50; on the Yorick, $7,886.50. making a total of $24,688.50. The fee in this case was 25 per cent.; Mr. Earle was the sole attorney.

Q. Estate of Frederick Franck De La Roche? A. There was an appropriation made to the estate of Frederick Franck De La Roche on the ship Teresa of $3,264.50; on the brig Yorick, $7886.50. Mr. Earle was the sole attorney in that case and the fee paid was 25 per cent.

73 *A.* John Carreire? A. John Carreire is one of the Baltimore cases and is included in equity cause 20,409; it was an appropriation on the schr. Lucy, of $11,744.96; the fee was one-third.

Q. Daniel Jackson? A. Daniel Jackson received an appropriation on the schr. Lucy of $3567; this is one of the Shellabarger & Wilson class of cases; the fee was 25 per cent.

Q. Any rebate? A. No, sir.

Q. William Davis? A. William Davis received an appropriation on the schr. Lucy of $992; this is also one of the Shellabarger & Wilson cases; the fee was 25 per cent.

Q. James A. Buchanan? A. James A. Buchanan—there was an appropriation to this estate on the ship Patapsco of $4,609.99; the

fee was one-third, and it was one of the cases known as the Baltimore cases and was included in equity cause No. 20,409.

Q. That was collected? A. Yes.

Q. Samuel Smith? A. Samuel Smith is also a Baltimore case and an appropriation was made on the Jane of $6,738.21 and on the Patapsco of $4.609.99; the fee was 33⅓ per cent., and it was included in the heretofore mentioned equity cause.

Q. William B. Buchanan? A. There was an appropriation to William B. Buchanan who is the survivor of the firm of Smith & Buchanan, on the Jane of $11,660.21 and on the Patapsco of $25,050. The fee in this case was one-third, it is one of the Baltimore cases and was included in equity cause 20,409.

74 Q. I inquired of you some time ago in regard to the Smith & Buchanan case; state whether or not the $11,660.21 to Smith & Buchanan and the appropriation for the same amount to William Buchanan, the survivor of Smith & Buchanan, is the same appropriation, or two separate and distinct appropriations? A. The same appropriation. The appropriation was made to William B. Buchanan as the surviving partner of Smith & Buchanan.

Q. John Hollings? A. There was an appropriation to this estate on the Jane of $4,922, and on the Patapsco of $7,600. This is a Baltimore case; the fee is one-third.

Q. Adam Tunno? A. There was an appropriation in this case on the Leeds Packet of $21,167.80; it is one the cases classified as the South Carolina; the fee was 12 per cent. to the Earle estate, and it is one of the cases included in the contract relating to the South Carolina cases produced by me a short while ago.

Q. James Gairdner? A. There is an appropriation for this estate on the Leeds Packet of $4,833.93 the fee was 25 per cent. and I produce the contract?

Q. John Turnbull, case No. 2829, page 4 of the act of Congress of March 3, 1899, on the ship Leeds Packet? A. There was an appropriation on the Leeds Packet in this case of $700; it is one of the South Carolina cases and is included in the contract with William E. Young and others; the fee to the Earle estate was 12 per cent.

Q. James Garrison? A. This also is one of the South
75 Carolina cases; there was an appropriation of $1700 on the Leeds Packet; the fee, of course, was 12 per cent.

Q. John Proudfit? A. There was an appropriation for the estate of John Proudfit on the ship Eliza of $6,951; the fee was 25 per cent. and I produce the contract.

Q. Was that 25 per cent. to the Earle estate? A. Yes; there was nobody else in that case.

Q. Samuel Brown? A. There was an appropriation made to Samuel Brown under the act of 1899 on the ship Jane of $600, and, as testified to by me in my former examination, this amount has not yet been collected.

Q. Joseph Rogers? A. There was an appropriation to this estate

on the schr. Thankful of $1,733.33 the fee was 25 per cent., and it is one of the Shellabarger & Wilson class of cases.

Q. That completes all the names. Now state whether or not there were any other contracts in which the Earle estate was interested which do not appear by Complainant's Exhibit No. 2 and appropriated for under the acts of 1891 and 1899. A. If not previously shown, as to the estate of James Barry there was an appropriation therein on the snow Fanny of $8,502 and I now produce the contract. Edward Dunant; there was an appropriation made to this estate on the ship Two Sisters of $294; on the snow Boston, $343, and on the sloop Martha $1,260. I produce the contract, which was for 25 per cent. In the case of Chandler Price in which there was an appropriation on the brig Lady Washington of $709.80, the fee was 25 per cent., of which Mr. Earle was to receive three-
76 fifths; it is one of the cases designated by us Philadelphia cases and it was included under a contract which I now produce between William E. Earle and Francis Rawle and Walter George Smith. There is an appropriation to the estate of Israel Thorndike on the schr. Alert of $1,003.73 the fee was 25 per cent.; it is a Shellabarger & Wilson case; Earle's interest was one-third. George Repold, there was an appropriation made in this case of $4,427.44 under the proviso stated in the bill as follows: "The last above three items" (of which this is one) "to be subject to a deduction of the amount of insurance received, which amount shall be investigated and determined by the proper accounting officer of the Treasury Department." This case was taken by us to the Treasury Department and the Comptroller allowed on the case $1094.11. John C. King of Baltimore is the attorney of record, Mr. Earle's fee in the case was $182.35. Samuel Meeker; there was an appropriation to this estate on the Lady Washington of $709.80; the fee was 25 per cent., and I now produce the contract. The cases of James Barry, Edward Dulant, Samuel Meeker, Chandler Price and George Repold are not included in complainant's list marked Exhibit No 2.

Q. Is that all? A. I know of none that have been omitted.

Hearing adjourned until 10:30 o'clock a. m., Thursday July 11, 1901.

77 TUESDAY, *July* 16, 1901—1 p. m.

Present: *Mr.* Messrs. Thomas and Miller for the complainant; Mr. Gittings for the defendant.

THEODORE J. PICKETT, re-called.

By Mr. GITTINGS:

Q. I hand you this book marked Complainant's Exhibit X. Y. Z.; state what it is? (Handing witness book.) A. This book contains the office expenses incurred in conducting the French Spoliation Claims, such as printing, rent, stenographers, and other small items.

Mr. THOMAS: I object to the witness stating the contents of the book.

Q. Who was that book kept by, Mr. Pickett? A. Kept by me.
Q. State whether or not that is a book of original entries? A. No; this book was made up from memoranda and verbal instructions from Mr. Earle. That is to say, when he would pay a bill he would say, for instance, "Here is a bill for printing I have paid; put it down in the book."
Q. In other words it is made up from vouchers? A. Yes, sir.

Mr. THOMAS: I object to that question as leading and suggestive, and also to the answer as improper and inadmissible.

Q. State how it was made up Mr. Pickett?

Mr. THOMAS: I object to that; the witness has already stated how it was made up.

A. This book was made up, as I above stated, from instructions and original bills. A great many of the items were made
78 from receipted bills which are now in my possession. All the items have a voucher number, running from 1 to 781. Some of them, however, such as amounts paid to stenographers in the office and some other accounts are not represented by receipts although they were paid.

Mr. THOMAS: I object to the testimony of the witness as incompetent and inadmissible, and as not the best evidence.
Mr. GITTINGS: I offer this book in evidence as being an account kept by the witness of the disbursements made for these expenses, the witness having previously testified it was his duty to keep the accounts and the accounts were kept by him.
Mr. THOMAS: I object to the introduction of the book in evidence as inadmissible and improper because it is not shown to be a book of original entry and further, because from the testimony of the witness that with a few slight exceptions the witness has the vouchers of alleged expenditures of Mr. Earle in the prosecution of these claims and he ought to produce them and go forward in the regular way to prove up these expenses and not tender some book here which he says contains those expenses.
Mr. GITTINGS: We will produce the vouchers as a supplement to the book, all those we have.
Mr. THOMAS: I think the witness should proceed in the regular way, and if necessary to refresh his memory in going along he should do so through his vouchers if he has any.

By Mr. GITTINGS:

Q. Does that book contain all the expenses incurred? A. Only such expenses as are called office expenses.
Q. Was there a book kept by either you or Mr. Earle containing

a memorandum of other expenses and the time they were
79 paid? A. Yes, there was a book kept showing the amounts paid to special attorneys, and for clerical services.

Q. Have you that book here? A. Yes, I have it here (producing) this large book contains that account.

Q. Turn to the pages of that book and designate the pages in which these items are kept.

Mr. THOMAS: I object to the introduction of the book in evidence on the ground that no sufficient foundation has been laid for it, and because it is inadmissible and improper to be introduced.

A. They are kept on pages 27 running to the bottom of 32.

Mr. THOMAS: I object to the question and answer as immaterial and inadmissible.

Mr. GITTINGS: I offer this book in evidence.

Filed, and marked Defendant's Exhibit O.

By Mr. GITTINGS:

Q. Were there vouchers kept or given by the parties to whom these sums were paid? A. Not that I am aware of.

Q. Do you know of your own personal knowledge whether these fees were paid to the several counsel as shown by the memoranda in that book? A. Generally speaking yes; but this has been some time ago and I do not remember distinctly as to which of them. They were paid as I have them in this book by check.

Q. Does that book show that they were all paid by check? A. No, because some of them were paid in the taking up of notes.

80 Mr. THOMAS: I object to this character of testimony as inadmissible, incompetent and immaterial. If any money was paid to special attorneys it will be for the defendant to prove it and to prove the character of the services and whether the person to whom it was paid was a lawyer and rendered any legitimate and proper services and not to submit a book here with an account of alleged payments without any explanation as to their character.

By Mr. GITTINGS:

Q. State whether or not you know the character of the services rendered by the several attorneys designated in the items in that book? A. Yes; part of the services performed was the writing of briefs, consultation and assistance rendered Mr. Earle in that manner. These consultations were held in his office and at a number of them I was present.

Mr. THOMAS: I object to the testimony of the witness as incompetent, inadmissible and immaterial, it being the duty of Mr. Earle himself so far as the contract in question is concerned to prepare the briefs and perform the legal services necessary in the prosecution of these claims, and it is wholly inadmissible to set up any such

charges and facts; they are not contemplated in the contract and are improper to be considered in this accounting, and I move that the entire testimony thus far of the witness and the books that have been offered in evidence be stricken from the record.

Mr. GITTINGS: We will rest at that.

Hearing adjourned subject to notice.

81 In the Supreme Court of the District of Columbia.

WAGGAMAN
vs.
EARLE.

FRIDAY, *October 11th*, 1901—10.30 a. m.

Hearing pursuant to notice.

Present: Messrs. S. T. Thomas, Earle and Gittings.

THEODORE J. PICKETT, having been recalled for further examination testifies as follows:

By Mr. THOMAS:

Q. When you were on the stand at the close of this case last summer you were unable to furnish some data in regard to Mr. Earle's services on the ground that the papers were in the custody of Mr. Hoehling then in Europe. A. Yes, sir; I could not produce the contracts but I was able to tell in nearly all what the fees were.

Q. Have you seen Mr. Hoehling since his return, in regard to the matter? A. No, I have not. I am not altogether sure that that answer is correct. I have an impression that I did say to Mr. Hoehling that the contracts were asked for and that he had those in which Shellabarger & Wilson and Samuel Stevens were interested, and that of course I could not produce them. I am not absolutely sure that I did mention it to him.

Q. I notice in going over your testimony that you make no mention of two cases in favor of James Scott, Nos. 3543 and 3317 on complainant's list No. 2. Do you know why that was? A.

82 The reason of that was that Mr. Earle was not the attorney for the estate of James Scott.

Q. He is the attorney of record up there in the Court of Claims is he not? A. I do not remember who filed that case No. 3317, but the other case, No. 3543 was a petition filed by Lovering, administrator of Taylor, and it included a number of claimants who were underwriters in the office occupied by Joseph Taylor. Under the rule established by the court the administrator of the estate of the occupier of the office was permitted to file a petition covering the interest of the estate by the underwriters of the policy which was the particular subject of that claim. Therefore Mr. Earle may have ap-

peared as attorney of record in that last number, under the rule of the court allowing one attorney of record in each case or petition, and at the same time, as happens time and again, he would not be the attorney of all the estates interested under that particular petition, although he would appear as attorney of record.

Q. Now the case No. 3540, the case of—— A. That is the same as the Scott case, one represented by George S. Boutwell and the other by Edward Lander.

Q. How about the case of Charles Francis Adams, No. 258, on this list of Mr. Earle's cases, Exhibit No. 2? A. Charles Francis Adams would be the administrator of Peter Gross, who was the administrator of Smith, Green, and Bussey, but I could not tell about the case without I had the name of the vessel. If I did omit that in my previous examination it should have been included.

Q. Well what was the contract in that case and what was
83 Mr. Earle's fee? A. The contract in that case was like the other contracts of the claims in which the estate of Peter C. Brooks was interested, and which I have heretofore testified to. That was a case in which William E. Earle and the late Jeremiah Wilson were interested. I have produced the contract here.

Q. The fee was the same as in the other cases? A. Yes, sir. I wish to say now that I did testify in the case of Peter C. Brooks.

Q. Take No. 207, William Vernon administrator Samuel Brown. A. I have heretofore testified in this case. Mr. Vernon the administrator refuses to take the necessary steps to draw the amount of the appropriation from the Treasury Department.

Q. How about the case No. 1709. John Stewart, receiver Baltimore Insurance Company? A. Congress made no appropriation in that case.

Q. Well how about No. 2271? A. Congress made no appropriation.

Q. No. 239, Charles Francis Adams, administrator. A. I must have testified about that case as I find it on my list here which I prepared for my examination. If I did not, I can say now that it is one of the cases of the Brooks estate.

Q. Now No. 345 Ebenezer Gay executor Ebenezer Gay, assignee of Thomas English, five hundred dollars. Did you testify about that? A. The act of Congress prohibited the payment of assignments. It has never been paid.

Q. 996 and 999, John Stewart receiver of the Baltimore In-
84 surance Company, How about those claims? A. No appropriation was made for that.

Q. No. 997, David Stewart and John E. Semmes, receivers of the Maryland Insurance Company. Was any appropriation made for that? A. No, sir. Congress has made no appropriation for any insurance companies with the exception of two cases for the Baltimore Insurance Company, the cases being numbered in the Court of Claims 1695 and 1781 respectively. They were paid under the act of 1891.

Q. No. 262. Have you testified about that? A. I do not know whether I testified about that case or not. I have not got it on either one of these lists.

Q. Have you got it in your book?

(Witness examines book.)

A. It is not in this book as to appropriations of 1891, and my book of the 1899 appropriation is not here. If asked about that case in my previous examination I must have explained its condition.

Q. How about case No. 497, William Vernon administrator of Samuel Brown, do you remember testifying about that? A. Yes sir, that is the one where he refused to take the preliminary steps to withdraw the amount from the Treasury.

Q. Nos. 2170, 2187, and 2177. Have you testified about those? A. They were not appropriated for.

Q. Now, No. 1495. Have you testified about that, George M. Gill, administrator of Gabriel Wood? A. I have heretofore testified as to that case.

Q. No. 236 H. Burr Crandall administrator Thomas Dickason Jr.? A. That was not one of Mr. Earle's cases.

85

Q. How do you account for his name being in the record as counsel? A. If his name appears on the record I do not know why it is there, other than its being a case under a petition filed by the administrator of the estate of the occupier of an underwriting office, and while Mr. Earle would appear on the record as attorney, the administrator of the various underwriters would come in and represent those cases after an appropriation. The Dickason case is represented by George S. Boutwell.

Q. Take No. 1660, have you testified about that? A. There was no appropriation in the case.

Q. How about No. 964? A. I have already explained the condition of the Samuel Brown case.

Q. No. 3498, have you testified about that? A. That is $116.20. I have testified as to that.

Q. Case No. 518, James Tisdale. Have you testified about that? A. No, it was not one of Mr. Earle's cases.

Q. No. 1483, how about that? A. There was no appropriation for it.

Mr. Thomas moves to strike out all of this cross-examination this morning.

Mr. Thomas moves to strike out the cross examination this morning upon the ground that it was based upon memorandum furnished him as to Mr. Pickett's testimony, and it seems that it is incorrect. Mr. Thomas states that he supposed this memorandum had been gone over carefully.

Mr. Gittings objects and the motion is denied.

86 By Mr. GITTINGS:

Q. You have testified that you kept these books under direction of Mr. Earle? A. Yes, sir.

Q. Were you familiar with the contract and order? A. I was familiar with it to the extent that I knew there was such a contract and its terms in general.

Q. Do you know that there was an order of the court directing Mr. Earle to keep these books?

Mr. Thomas objects upon the ground that the order speaks for itself.

Q. You have stated that you were familiar with this order of the court. Do you know whether or not these books were kept as they ought to have been kept under that order by Mr. Earle? A. I stated that I knew generally the order of the court giving Mr. Earle custody of the papers, and I knew he was to pay the cost——

Q. Had you a contract with Mr. Earle relative to these cases?

Mr. Thomas objects.

Q. Mr. Pickett, did you have a contract with Mr. Earle relative to the prosecution of these French spoliation cases? A. Yes, sir.

Mr. Thomas objects and the objection is overruled.

Q. Have you a copy of that contract with you? A. I have not. There is one in existence however.

Mr. Gittings offers the books in evidence as the records kept by Mr. Earle under the order of the court.

Mr. Thomas objects for the same reasons as stated at a previous session in this reference.

87 Q. Were these books ever examined by Mr. Waggaman, during Mr. William E. Earle's lifetime? A. Yes sir, a number of times.

Q. They were always accessible to him? A. Yes sir, always. He had a desk put at his disposal or services, in the office of Mr. Earle, and he examined the books, a number of times.

Mr. Thomas objects.

WITNESS: He called with a gentleman who I was at that time told was Mr. Williamson. I know *know* that it was Mr. Williamson.

The AUDITOR: How far the books offered may be taken as evidence is one that I prefer not to pass upon now. For the present the books will be admitted.

Mr. Gittings offers the book in evidence for the purpose of showing the receipts and disbursements made by Mr. Earle during his lifetime, these being the books ordered to be kept, by the court, and were open to inspection by the administrator, the other party to the contract, and were examined by him, and no other account or proof

of any other account demanded under the appropriation of 1891 in so far as expenses had been incurred by Mr. Earle under that appropriation.

Mr. Thomas objects to the books as incompetent to show the receipts and disbursements by Mr. Earle in the prosecution of these claims, and insists that these expenditures must be proved in another way.

88 HENRY M. EARLE, having been first duly sworn testifies as follows:

By Mr. GITTINGS:

Q. You are the administrator of the estate of William E. Earle, deceased? A. I am.

Q. State whether as such administrator you at any time prepared and delivered an account to the administrator of the estate of Mr. Causten?

Mr. Thomas objects and the objection is overruled.

A. Soon after the death of my father I received a letter from Mr. Waggaman or his counsel Mr. Williamson, asking as to the status of the French spoliation claims at that time. I do not think I was the administrator at that time, I think my step mother was acting as executrix, and I think that it was subsequently that I was appointed administrator. I had a full account made up by Mr. Brennan and I delivered it to Mr. Williamson in *my* Waggaman's office myself.

Q. When was this? A. In August, or the fall, after my father's death. I remember of spending a great deal of time with the accountant in making it out. At that time I asked Mr. Williamson to come up and examine the books or I would bring them down there. We discussed what was to be done in regard to the French spoliation cases on account of the death of my father. I left the account with them.

Q. Did they accept the account?

Mr. Thomas objects and the objection is sustained.

Mr. Gittings calls for the production of the account.

Mr. Thomas states that he will notify Mr. Williamson to produce the account.

89 The hearing is then adjourned to Saturday, October 12th. 1901, at 10 o'clock, a. m.

SATURDAY, *October* 12*th*, 1901—10 a. m.

Hearing pursuant to adjournment.

Present: Messrs. Thomas, Williamson, Gittings, W. J. Miller and Mr. Waggaman.

THOMAS E. WAGGAMAN, having been first duly sworn testifies as follows:

By Mr. THOMAS:

Q. You are the complainant and administrator in this case? A. Yes, sir.

Q. Do you know Henry M. Earle, the administrator of William E. Earle? A. I know of him.

Q. I wish you would state whether Henry M. Earle or anybody on behalf of William E. Earle's estate ever rendered to you an account of William E. Earle's business in the French spoliation claims under the act of 1891? A. The only account I ever had is this account this litigation is about.

Q. No other account was ever rendered to you? A. No, sir.

Q. State what examination you made from time to time of his books? Mr. Pickett for the defendant, claims that you came into Mr. Earle's office several times and examined the books. A. I came in several times with Mr. Williamson to examine the books and we found it very difficult to get a satisfactory statement. We found money had been paid to various lawyers at various times and we objected to these payments among other things, in fact we objected to all of it.

90 Q. To whom did you object? A. I cannot remember the exact parties, to the people in the office who were there, and I think letters were written about it.

Cross-examination.

By Mr. GITTINGS:

Q. You say that you made your objections to the people who were in the office? A. Yes, sir.

Q. Did you object to Mr. Pickett? A. I do not remember, I know that letters were also written about them.

Q. Can you give the date of any letters? A. I think that Mr. Williamson has some.

Mr. WILLIAMSON: I haven't the letters written to Mr. Earle.

WITNESS: I know that objection was made and I know that we have letters from the heirs.

Q. Have you any communication that you received from Mr. Earle in respect to or reply to your letters? A. I do not know, I know that the account was not satisfactory, and we objected to it.

Q. When were these objections interposed? A. When we were examining the books.

Q. How long after the appropriation of 1891 was this? A. That I do not know.

Q Did you at any time demand any other account of these vouchers? A. To my impression we demanded several times.

91 Q. To whom were these demands made? A. My impression is that they were made to Mr. Earle himself.

Q. What were the exact items to which you objected?

IRVING WILLIAMSON, having first been duly sworn testifies as follows:

By Mr. THOMAS:

Q. You are a member of the bar of this District? A. Yes, sir; I have practiced here for many years.

Q. You have been the counsel for Mr. Thomas E. Waggaman for many yeara? A. Yes, sir; before the contract with Mr. Earle was made, and since.

Q. Have you attended to his legal matters in regard to these French spoliation claims? A. I have altogether.

Q. It is claimed by Mr. Pickett that from time to time during the prosecution of spoliation claims by Mr. Earle and since the contract in regard to the use of the *Cua*sten papers, that you and Mr. Waggaman came to Mr. Earle's office and examined these papers and accounts of his relations to the Causten estate, and also that an account was furnished Mr. Waggaman; and Mr. Henry M. Earle also testifies to furnishing an account. State what you know about this. A. There was no time to time examination of Mr. Earle's books during his lifetime. At Mr. Waggaman's suggestion I went to Mr. Earle and he said that it would be advisable for us to come to his office and make an examination of the books. We

92 accordingly went there and undertook that examination, but found it almost impossible to find anything about the receipts or disbursements. I remember that in one book the entries were not by date, and it was impossible for us to compare the vouchers with the books. For instance we could not find out what proportion of the rents account was due by the Causten estate and what on Mr. Earle's account. After we had been there three or four times I told Mr. Earle it was useless for us to proceed any further. We discovered six thousand dollars paid out for lawyers' fees, and I told Mr. Earle that it appeared to us that this had been paid for services outside and we could not pay it. After we got through I told Mr. Earle we would have to have an account from him at some time and so far as shown the account by the books was not explainable and could not be received. As to any account rendered by Mr. Henry M. Earle after his father's death I do not know anything about it. I saw Mr. Henry M. Earle after his father's death; there was some talk of getting the papers and giving them to lawyers to prosecute the cases. Mr. Waggaman was to file a petition for in-

structions as to what to do with the papers. After that conversation I told Mr. Earle we ought to have an account. From that time up to the time of the prosecution of the suit there have been efforts to get a settlement, and this is the first account I have ever seen.

Q. Mr. William E. Earle never rendered an account in his lifetime? A. No, sir.

Cross-examination.

By Mr. GITTINGS:

Q. Who was present at the time you said you were not satisfied with the books? A. I think Mr. Waggaman. I remember
93 seeing Mr. Earle at my office one time in regard to some Ven-zuelean claims and in talking about that matter this came up.

Q. How long was this before Mr. Earle's death? A. Some time.

Q. One, two or three years? A. I cannot tell.

Q. The appropriation was made in 1891. A. I know that now, but did not remember it until this suit was filed. It must have been in 1891.

Q. Did you ever examine the books in Mr. Pickett's presence? A. I did not know Mr. Pickett personally until I saw him there.

Q. Did you ever demand an account, in writing, did you ever write a letter? A. I think that I wrote to Henry M. Earle on one occasion.

Q. Prior to William E. Earle's death did you ever write to him demanding an account? A. I do not remember, but remember of seeing him. I do remember of writing a long letter to Mr. Earle in reference to the difficulty in the examination of the books.

Q. Have you a copy of that letter? A. I am sure that I can produce a press copy of the letter and will produce it.

Q. You say that you had some conversation with Mr. Henry M. Earle, was that not subsequent to the appropriation of 1899? A. No sir, that was before. I produce a letter written in 1894 by Mr. Earle, which is evidently a reply to a communication of Mr. Waggaman's. Also another one promising to do something about
94 the matter. Also a letter in which he says the thing has been running for eight years and he will try and straighten it out. When I undertook to get this last account there never was any suggestion by him that he had rendered a previous account, and I never heard of such account until Mr. Thomas called my attention to it last Saturday.

Q. Are those all the letters you received from Mr. Earle? A. Those are all that I can find now.

Q. You do not mean to say that any of those letters are in reference to your demand for an account? A. One of those letters is a reply to a letter in 1894 in regard to some fact of the after custody of the papers. I am sure there was also a letter to Mrs. William E. Earle.

Mr. Gittings states that they will admit all press copies of letters demanding an account from Mr. Earle.

Q. When you went over the books in the office of Mr Earle who was present? A. I am absolutely unable to tell at this time, a letter was written which I can produce stating the difficulty in all these things.

Mr. Thomas offers in evidence two letters of Henry M. Earle dated September 15th, 1894 and November 22d, 1894, to Thomas E. Waggaman, in regard to the Causten matter and in reply to his letters.

Mr. Gittings objects to the offer of these letters at the present time.

The auditor states that he will not rule upon these letters at this time, and they are filed marked Exhibits I. W. Oct. 12/01.

95 Mr. Gittings offers in evidence the contract between Henry M. Earle as administrator of the estate of William E. Earle and Theodore J. Pickett and William S. Curtis in reference to prosecuting the French spoliation claim.

Mr. Thomas objects.

The paper is filed for the present marked Exhibit T. J. P. Oct. 12/01.

Hearing is adjourned to Tuesday, October 22, 1901, at 10 a. m.

TUESDAY, *October* 22*d*, 1901—10 a. m.

Hearing pursuant to adjournment.

Present: Messrs. Thomas, W. J. Miller, Gittings.

THEODORE J. PICKETT, having been recalled by Mr. Gittings testifies as follows:

Q. Have you made a search for the checks given by William E. Earle to Omar D. Conger, Phil B. Thompson, Walter S. Hutchins, Frank B. Conger, H. W. Worthington, William McAdoo, H. D. Money, Robert B. Bradford, Dudley & Michner, C. R. Shelley, and L. B. Clarke?

Mr. Thomas objects and the objection is overruled.

A. Yes sir, I made a thorough search in the office files and among papers that had been boxed up since Mr. Earle's death and even before that time, and I failed to find the checks. Not only those checks but any checks.

Mr. Pickett's examination is suspended temporarily.

JOHN C. GITTINGS having first been duly sworn testifies as follows:

After Mr. Henry M. Earle moved to New York we had a
96 clerk by the name of Charles M. Ricketts, whom he wanted to take to New York with him, and in the office we had two

chests full of checks, that had come down from 1417 G street where they had been stored in the cellar. Mr. Earle wanted to take his books and papers to New York and asked this young man to go through the chests and get out the papers that were of any use and send them over to him. This was done and I remember distinctly that more than four-fifths of the contents of those chests were thrown away, the majority of which were old checks, stub books and the like belonging to the estate of William E. Earle. I knew nothing at that time of the French spoliation claims and Mr. Earle did not tell me of them. I know that a great many stubs were thrown out at that time and what covered the contents of two large chests went into two small soap boxes. I know that Mr. Earle cannot find these checks and believes that they can be found in the cellar of 1417 G street and so stated to me. On that information I asked Mr. Pickett to go through the papers and see if they were there.

Mr. Thomas objects to this testimony and the objection is overruled.

At this point the defendant presents an account of the defendant in this cause which is filed marked, Defendant's Account.

Mr. THOMAS: The complainant objects to the items of alleged expenses in the account rendered by the defendant in this cause, as follows: To the amounts paid Omar D. Conger & Son, $2,000.00 to Phil. B. Thompson, $2,500.00 to Walter S. Hutchins, $5,250.00 to Frank P. Morgan, $150.00, to H. W. Worthington, $200.00 to William McAdoo, $100.00 to H. D. Money, $1,000.00 to Robert B. Bradford, $3,608.05, to W. T. S. Curtis $6,150.00 to T. J. Pickett, $10,400.00 to Dudley & Michner, $2,000.00 to C. R. Shelley, $1,000.00
97 to L. B. Clark, $700.00 also to the costs, $2,133.80 of the suit against Clarke and others. Under the head of general "Expenses French spoliations," the complainant objects to all items of rent, printing, paid to J. D. Milans, and sundries, and also to the following items:

Voucher 14, S. J. Haislett	10.00
Voucher 17, M. W. Beveridge	4.20
Voucher 108, Innis N. Palmer	700.00
Voucher 307, " " "	1300.00
Voucher 169, M. A. Downing	60.00
Voucher 183 A. Hopkins	693.00
Voucher 200 M. A. Downing	60.00
Voucher 350 "Capital"	15.00
Voucher 502 "	77.00
Voucher 503 "	135.00
Voucher 529, C. T. Lovering	2317.00
Voucher 542, S. A. Huntington	88.65
Voucher 556, W. T. S. Curtiss, depositions	190.00
Voucher 565, linotype company	190.82

The objection to these accounts is that they are expenses not contemplated or provided for in the agreement between the complainant and the late William E. Earle in regard to the use of the Causten papers.

W. T. S. CURTISS, having first been duly sworn testifies as follows:

By Mr. GITTINGS:

Q. You are associated with Mr. William E. Earle in prosecuting the French spoliation cases? A. Early in 1885, shortly after the passage of the act, Mr. Earle needing assistance retained me
98 to help him in the prosecution of these cases. I immediately began work upon them. I had been at the bar some years and had considerable experience.

Q. Did you enter into a contract with Mr. Earle? A. At the very beginning we had a verbal contract, and afterwards there was a written contract.

Q. What was that verbal contract? A. I think it was the same that was put in writing some months afterwards. I will produce a copy of the contract. Shortly after I entered into the contract with Mr. Earle, whereby he agreed to give me fifty dollars a month in cash and one hundred dollars additional a month to be paid out of the first moneys received from these claims.

Mr. Thomas objects to the answer as not responsive to the question.

Q. When did that written contract cease?

Mr. Thomas objects and the objection is sustained.

Q. What did you do under that contract? A. I immediately began the work of bl[illegible]ng out and preparing the petitions necessary to present the cases to the Court of Claims, I also devoted my entire time for many years or nearly all of my time to the preparation of these cases, prepared nearly all of the petitions filed by Mr. Earle, in my own hand, obtained the data by searching through the records of the State Department, the voluminous masses of papers from the custom houses of the United States and the papers known as the Causten records.

Q. What was Mr. Earle doing during that time? A. Most of this time he was engaged in the preparation of the legal facts of the cases, the data necessary for the argument before the Court of
99 Claims. We had so many cases that it took our entire time.

Q. At the time you entered into the contract with Mr. Earle had he been retained in all the cases he had at the time of his death? A. By no means. I began at the beginning and in addition to this work of my own we — a great amount of labor in the way of correspondence in obtaining these cases. There were other attorneys in the field.

Q. Who attended to that? A. Mr. Earle, Mr. Downing, Mr. Pickett, we each had to take our share.

Q. Was there or not, too much work for one man or two, to attend to these cases? A. There was work enough for a dozen.

Mr. Thomas objects to this testimony and the objection is overruled.

Q. How many clerks were employed by Mr. Earle in the prosecution of these cases? A. Well, Mr. Pickett came in at the beginning, and we had Downing, Blandford, Vincent and General Palmer was in the office continually working on the details and translating.

Q. There were other clerks? A. No, sir.

Q. What other business did Mr. Earle have at that time if any? A. I knew Mr. Earle and associated with him continually from 1885 to the time of his death in 1894, and know he devoted almost the entire time to these cases. He had very little other business than the spoliation cases and he devoted about his entire time to the prosecution of those cases.

100 Q. The offices that you used at this time were they used for any other purposes than the French spoliation cases? A. No other business. It was known as the Causten agency.

Q. Were the stenographers employed by Mr. Earle employed for any other purposes than the French spoliation cases? A. For very little if anything else.

Q. You spoke of Innis N. Palmer as a clerk. What services were performed by him? A. He was a very skillful and fluent French and Spanish scholar, and the records in our cases were mostly in the French and Spanish dialect known as the West Indian patois. General Palmer spent most of his time, and often at his home at night, in the translation of these documents. The time he spent was immense.

Q. You have stated that you prepared these petitions. State whether it was necessary to have them printed before being filed in court? A. They were first engrossed and then printed, they had to be printed in order to make up the record for the trial in court, almost all the cases.

Q. Was it necessary to file the petitions at any particular time? A. They had to be filed before the first of January, 1887.

Q. Do you remember how many cases Mr. Earle filed petitions in? A. I never figured it out but it must have been two or three thousand petitions alone.

101 Q. Did it require a separate petition for each heir interested in a claim? A. A separate petition was filed in the case of the administrator of each estate, except in the cases of underwriters.

Q. State what the voucher No. 556, for $190.00, was for? A. That was for my actual travelling expenses and incidentals incurred on behalf of Mr. Earle in the taking of a large number of depositions in the years 1888 to 1891, establishing identity of next of kin, and obtaining evidence in Maine, New Hampshire, Massachusetts, Connecticut, New York, and I think in other States. Mr.

Earle found it absolutely necessary to have these depositions taken and I was sent throughout these States to have their testimony taken. That $190.00 only covers the travelling expenses and bare necessities. I find here attached to the voucher the cases in which the depositions were taken.

Q. Do you know whether Mr. Earle paid Omar D. Conger & Son $2,000.00? A. I distinctly remember that he paid them a large amount of money for legal services in connection with the prosecution of these cases. I have seen him give them checks in my presence, and have heard the conversations between the gentlemen that it was in compensation of that service.

Mr. Thomas objects.

WITNESS: I know myself that they rendered services for I saw the services rendered.

Q. What services did Conger & Son render? A. They prepared a general argument on the question of the liability of the United States, in support of the decisions of the court, and this brief was used before the committees in Congress.

102 Q. When were these French spoliation claims first presented to Congress for payment, when was the first bill certified to Congress for the payment of them? A. I think some time late in 1886 or beginning of 1887, just before the expiration of the limitation.

Q. At how many sessions of Congress were bills presented for the payment of claims certified to Congress for payment, by the Court of Claims prior to the appropriation being made? A. After the awards went up, which I think was late in 1886, continuous effort was made every session until the first act was passed on the 3d of March, 1891.

Q. Continued effort was made by whom? A. Mr. Earle.

Q. When was Mr. Conger employed by Mr. Earle to assist him?

Mr. Thomas objects.

A. I cannot tell just the date but feel assured it was before 1891, because he was paid shortly after the act was passed, when Mr. Earle got the money.

Q. State if you know whether the contract with Conger & Son was based upon the appropriation or by reason of any funds that should come into Mr. Earle's hands by reason of the appropriation?

Mr. Thomas objects and the objection is sustained.

Q. State whether the contract with Conger & Sons was, or was not a contingent fee.

Mr. Thomas objects and the objection is sustained.

Q. State what the terms of the contract were, if you know?

Mr. Thomas objects.

103 A. All that I know is that in my conversations with Mr. Earle and Mr. Conger I knew they were to be paid on a contingency, I never saw the contract but know what the respective parties told me.

Mr. Thomas objects to the answer and the objection is sustained.

Q. State what if any conversations you heard between Mr. Conger and Mr. Earle in reference to the contract? A. I heard them discussing the possibility of the recovery of this money, and how they were to be paid when the act passed, and when it did pass he was paid.

Mr. Thomas objects to the testimony and the objection is sustained as to the last part of the answer.

Q. Do you know Phil. B. Thompson, and whether he was at any time employed by Mr. Earle to assist him in the French spoliation matters? A. Yes sir, I know that he was, during the same time as these other parties were retained prior to the appropriation.

Q. Do you know whether any money was paid to him by Mr. Earle for his services? A. I do.

Q. How much? A. I have seen Mr. Earle pay him separate checks, and Mr. Thompson has told me he was paid twenty-five hundred dollars.

Mr. Thomas objects and the objection is sustained.

Q. Do you know Walter S. Hutchins? A. Yes sir, I know him.

Q. Was he ever employed by Mr. Earle in the prosecution
104 of these cases? A. I know that he was.

Q. Do you know whether he was ever paid for his services, and if so, how much?

Mr. Thomas objects.

A. I know he was paid but just how much I cannot say.

Q. Do you know Frank P. Morgan? A. Only by sight. I have seen him in Mr. Earle's office often.

Q. Do you know whether he assisted Mr. Earle in the prosecution of these cases?

Mr. Thomas objects.

A. I have often seen him in the office of Mr. Earle but what he did I do not know.

Mr. Thomas states that he reserves an objection to all testimony touching the several claims for credit by payment to other counsel or experts employed by Mr. Earle in the prosecution of the French spoliation cases.

Q. Do you know William McAdoo? A. I know of him but not personally and do not know anything about his particular connection with this matter.

Q. Do you know W. H. Worthington? A. I do.

Q. Do you know whether he assisted Mr. Earle in the prosecution of these cases, and how much he was paid? A. Yes, sir, I have seen Mr. Earle give him checks but the exact amount I do not know.

Q. Do you know H. D. Money, and whether he assisted Mr. Earle? A. Yes, sir; he did.

105 Q. Did you ever see Mr. Earle pay him money? A. No, sir.

Q. Do you know Robert B. Bradford? A. Yes, he is now dead.

Q. Did he assist Mr. Earle in the prosecution of these cases? A. Yes sir.

Q. Did you see Mr. Earle pay him any money? A. Yes sir, I know that he paid him money, thousands of dollars. Mr. Earle drew the checks and paid them in my presence.

Q. This account shows $6,150.00 paid you. Was that for services under the terms of your contract with Mr. Earle? A. That was for services under the contract and services rendered to him in the prosecution of these cases.

Q. Do you know Dudley & Michener, and did they assist Mr. Earle in the prosecution of these cases? A. Yes sir, they did.

Q. Do you know whether he ever paid them anything for these services? A. I never saw the checks delivered or payments made to these gentlemen.

Q. Do you know C. R. Shelley, and do you know what he did to assist Mr. Earle in the prosecution of these cases? A. Yes sir, he like the other gentlemen appeared before the committees, and argued the legal questions and were often, time and time and again at the office of Mr. Earle talking with him and preparing themselves for the presentation of these cases, and Mr. Earle coached them. The act of

106 Congress sending these cases to the Court of Claims did not make them judgments but left it for Congress to say whether the findings of the court should be paid, and if it had not been for these services we would never have got a cent.

Q. Did Mr. Earle spend much time before the courts himself? A. Yes sir, for some years.

Q. State whether or not, in your opinion, the compensation paid these gentlemen was reasonable:

Mr. Thomas objects.

The auditor states that the question will be admitted subject to the general and special objection.

A. I consider the amounts very reasonable in view of the labor performed and results obtained, if it had not been done the fate of the French spoliation claims would have been doomed.

Q. Do you know L. B Clarke, and whether he assisted Mr. Earle in any capacity in the French spoliation matters? A. Yes sir, this party assisted greatly in hunting up manifests and records in the customs houses.

Q. Were they such services as were essential to the prosecution of the cases? A. All of these were, yes sir.

Cross-examination.

By Mr. THOMAS:

Q. Who was Omar D. Conger? A. A very prominent lawyer formerly a member of Congress from Michigan.

Q. He had been a Senator had he not? A. Yes sir, but was practicing law in this city.

107 Q. Who was Phil. B. Thompson? A. Quite a prominent lawyer of this city, formerly from Kentucky.

Q. He had been a member of Congress at one time? A. Yes sir.

Q. Have you any personal knowledge of this alleged payment of $2,000.00 to Omar D. Conger? A. Yes, sir; I saw the checks paid to Mr. Conger and remembered once or twice seeing him pay cash to the son.

Q. How much cash did you see him pay? A. I cannot say the amount.

Q. How many checks? A. I cannot remember.

Q. Which one of the Congers, father or son, did he give these checks to? A. They were handed to one or the other.

Q. Do you know of your own knowledge of money paid to Phil. B. Thompson? A. Yes sir, he was paid by check or cash, I could not say how much by cash or how much in checks.

Q. What services did Mr. Thompson render? A. He went before the committees and argued the question as to the legal liability of the Government.

Q. These cases had all been certified to Congress by the Court of Claims? A. Some of them.

Q. And there had been printed petitions in the Court of Claims? A. Yes, sir.

Q. Was all the evidence in the cases printed? A. I think not all.

108 Q. Were there printed briefs and arguments in the cases? A. Yes, sir.

Q. Do you know whether Conger & Son had the benefit of these briefs and arguments when they made their arguments? A. I think so.

Q. Did they add to the arguments? A. I think so, in some cases.

Q. Do you know what those cases were? A. There was one of the attorneys found data showing that none of these decrees by the French courts were based on the ground that the United States and France were at war and refuted their statement in Congress.

Q. Which one of the attorneys found that out? A. I cannot remember just now.

Q. Was that the only new fact in the case that was not in the Court of Claims? A. Oh no, Congress had ignored the judgment

of the Court of Claims and it was necessary to present additional arguments in addition to what the court had said.

Q. Who was Walter S. Hutchins? A. A son of Stilson Hutchins.

Q. What did he do? A. I think he went before the committees.

Q. Do you know whether he is a lawyer? A. I cannot say.

Q. Frank P. Morgan, what did you say he did? A. I do not know much about him.

Q. You don't know whether his services were worth $150.00? A. I could not say of my own knowledge.

109 Q. H. W. Worthington, do you know him? A. Yes sir, he is a lawyer.

Q. Does he practice in the courts or at the Capitol? A. I could not say.

Q. You never came in contact with him around the court house? A. I could not say.

Q. Do you know whether Mr. Earle paid him $200.00 in these cases? A. I could not say.

[Q. Where was he? A. In Mr. Earle's office.]*

Q. Are you personally acquainted with William McAdoo? A. I cannot say that I am.

Q. You don't know whether $100 was paid to him? A. I could not say.

Q. Do you know Mr. H. D. Money? A. Yes sir, he has been a member of Congress and is now a Senator.

Q. What had he to do with these cases? A. The same as the rest of them.

Q. Do you know anything about this alleged payment of one thousand dollars to him? A. I do not.

Q. Now this payment to Robert B. Bradford? A. I know that I saw checks given to him a good many times.

Q. How many checks were paid to him? A. I cannot say just how many.

Q. Do you know for how much these checks were? A. I 110 could not say at this date.

Q. Was Mr. Bradford a lawyer? A. I think so.

Q. Where did he practice? A. Around the Capitol.

Q. Did he have any business around the courts here? A. I could not say.

Q. You say you first went with Mr. Earle in 1885, how old were you at that time? A. Nearly thirty years, I had been at the bar six years, and had been with Shellabarger & Wilson at that time.

Q. Didn't you go as a clerk at that time? A. I was paid practically as a clerk to perform legal services.

Q. He paid you fifty dollars a month? A. Fifty dollars cash and one hundred dollars more.

Q. And you worked with Mr. Earle on these cases? A. Yes sir.

Q. Do you know where Dudley & Michener rendered services?

[* Words enclosed in brackets erased with pencil.]

A. All in Congress before the committees before the passage of the act of 1891.

Q. What committee? A. The Judiciary and Appropriations Committees in both the House and Senate.

Q. Were you personally acquainted with Mr. Shelly? A. Yes sir, I know him.

Q. Formerly a member of Congress? A. I do not know.

Q. Should that be C. R. or C. M. Shelly? A. I could not say. Mr. Shelly has lately been with C. B. Butler of South Carolina.

111 Q. Do you know whether one thousand dollars was paid to him? A. I do not know.

Q. Where was his work? A. Around the committees.

Q. L. B. Clarke, what is his business? A. Had he been a member of Congress, or was he a lawyer? A. No, his business was hunting up the manifests and registers.

Q. Was he a clerk in Mr. Earle's office? A. No, sir.

Q. Do you know whether he was paid $700.00? A. I do not.

Q. Do you know whether Mr. Earle had any other business in the Court of Claims except these spoliation cases? A. Very little.

Q. Any departmental business? A. Hardly any.

Q. Where did he have his office in 1885? A. He moved, I think, from the Corcoran building to the Kellogg building upon the passage of the act.

Q. How many rooms did he have in the Kellogg building? A. Several.

Q. Did he carry his other business in there with him? A. He had hardly any other.

Q. During these cases did he argue any other cases in the Court of Claims? A. Few.

112 Q. Did he have any cases in the supreme court of the District of Columbia? A. I think a few small ones.

Q. He had other business before the departments? A. Very few cases.

Q. Was he attending to some other business then? A. It hardly could be called much.

Q. Did he have other cases before Congress than these? A. I do not think so.

Q. When did you cease to be employed by him? A. I think I was with him until the spring of 1893. Congress had failed to make an appropriation and my work in those particular cases stopped. There was a mutual agreement that I should not charge anything for my services after that date.

Q. Did you remain in his office from 1893 to the — of his death? A. Yes sir.

Q. Did you pay any rent? A. Yes sir, very little, I had only desk room.

Q. Did you pay any rent before 1893? A. Prior to 1891 I did not because I was working on these cases exclusively.

Q. Did you do any other business during the time you were with Mr. Earle? A. Very little.

Q. Did you practice in the supreme court of the District of Columbia? A. Very little.

Q. You had no other business before the Court of Claims
113 except the French spoliation cases? A. No, very little, my time was devoted almost exclusively to these cases.

Q. Do you know whether Mr. Earle had any other French spoliation claims as associate counsel with other attorneys, in which these Causten papers were used, other than those on the list? A. No, sir; he did not have any other claims.

THEODORE J. PICKETT, having been recalled testifies as follows:

By Mr. GITTINGS:

Q. Do you know Omar D. Conger & Son? A. Yes sir, very well.

Q. Do you know whether they were employed by Mr. Earle in the prosecution of these cases? A. I do.

Q. Do you know whether Mr. Earle paid them anything for their services? A. I do.

Mr. Thomas reserves an objection.

WITNESS: I know he gave them checks for various amounts, either Mr. Conger or his son, and Mr. Earle told me at the time the checks passed to put it down in the book of accounts.

Q. Did he tell you the amounts at that time? A. Yes sir.

Q. Do you know Phil. B. Thompson and whether he was employed by Mr. Earle in the prosecution of these cases? A. Yes sir, he was.

Q. Do you know whether he was paid for his services and how much? A. Yes sir, in the same way as the Congers.

114 Q. Do you know Walter S. Hutchins? A. Yes, sir.

Q. Do you know what services he performed? A. I know that he was paid because I saw the checks but do not carry the amounts in my mind.

Q. Do you know Frank P. Morgan. A. Yes, sir.

Q. Do you know whether Mr. Earle paid him anything? A. I think he paid him $150.

Q. Did you see him pay it? A. Yes, sir; my impression is very strong that I saw Mr. Earle give him the check.

Q. Do you know William McAdoo? A. Yes, sir.

Q. Do you know whether he rendered any services? A. The payment to Mr. McAdoo was made as a compensation for having Mr. Earle retained in some cases. It was a part of the fee. I know it was for services in the French spoliation cases.

Q. Do you know H. D. Mooney? A. Yes, sir.

Q. Do you know whether he was employed and paid by Mr.

Earle? A. Yes, sir; he was. I took checks to him myself on several occasions.

Q. Do you know whether it was the amount stated? A. It was the amount stated in the books.

Q. You carried the checks to him? A. I remember one time I did so.

Q. Do you know R. B. Bradford? A. Yes, sir.

Q. Did he render any services? A. Yes, sir.

115 Q. The amount shown in the books as paid to him is correct? A. Yes.

Q. Do you know Dudley and Michener? A. Yes, sir; I know of them but do not personally know them.

Q. Do you know whether they rendered any services to Mr. Earle? A. Yes, sir.

Q. Were they paid? A. I know that Mr. Earle wrote out checks for them and told me to charge them up.

Q. Do you know C. R. Shelley? A. Yes, sir.

Q. Did he render any services to Mr. Earle? A. Yes, sir. The amount stated in the book as paid to him is correct.

Q. What is the amount of $10,400 which appears in the books as due you? A. I rendered services as a clerk in Mr. Earle's office until I was admitted to the bar. I was then retained as an associate counsel and argued some of the cases in the Court of Claims. My duties consisted of searching the records to find data upon which to file suit. I searched the records in the State and Treasury Department- and the Congressional Records, and I assisted in getting

116 various records and did the general duties of a clerk in the office.

Q. Was it a written agreement with Mr. Earle? A. No sir.

Q. What were the terms? A. He was to pay me one hundred dollars a month.

Q. Does the book correctly show the data you began your services? A. Yes, sir.

Q. Was that a reasonable compensation for the services you rendered? A. Yes sir.

Q. What had you been earning prior to accepting that *petition?* A. The salaries I got prior to that time varied. I sometimes got sixty dollars a month and at times when I was in charge of the work I got seventy-five dollars a month and expenses.

Q. What were you getting just at the time you gave up your position to, go with Mr. Earle? A. Just prior to the time I went with Mr. Earle I had been in charge of work on the James river and I got just seventy-five dollars a month and expenses, and the month before that I got just sixty dollars a month.

Q. Were you to be paid monthly or in part of the contingent fee? A. I was to be paid monthly.

The hearing is then adjourned to Wednesday, October 23d. 1901, at ten o'clock a. m.

WEDNESDAY, *October 23rd*, 1901—10 a. m.

Hearing pursuant to adjournment.
Present: Mr. J. C. Gittings, W. T. S. Curtiss.

Mr. Gittings files and offers in evidence the original con-
117 tract between William E. Earle and William T. S. Curtiss, referred to in the testimony of Mr. Curtiss yesterday. Mr. Gittings files a copy of the said contract subsequent to the objection of counsel for the complainant and others interested and the right to call for the original at any time in the progress of the cause.
The copy is filed marked Exhibit W. T. S. C.—Oct. 23/01.

The hearing is then adjourned subject to notice.

FRIDAY, *October 25th*, 1901—11 o'clock a. m.

Hearing pursuant to notice.
Present: Mr. Thomas, Mr. Miller, Mr. Gittings, and Mr. Earle.

THEODORE J. PICKETT, having been recalled for further examination testifies as follows:

By Mr. GITTINGS:

Q. Have you voucher 14? A. Yes sir. (Witness produces voucher.)
Q. State what the payment to Haislett was for? A. That bill was for awnings put up at the windows in one of the office rooms to exclude the sunlight which generally came in there during the morning and afternoon.
Q. State whether that was or was not one of the rooms used by the Causten agency? A. It was the room in which Mr. Earle had his desk.

Mr. Thomas objects.

Q. Have you voucher 17? A. Yes sir. (Produces voucher.)
Q. What is it for? A. It is a bill from M. W. Beveridge for
118 filter and water cooler, stand &c. The bill amounts to $8.39 of which one-half or $4.20 was charged to spoliation expenses.

Mr. Gittings offers the voucher in evidence.
Mr. Thomas objects to the offer as immaterial and an improper charge in this account.

Q. Have you vouchers 57 and 58? A. Yes sir. (Produces vouchers.)
Q. Were there any charges in those vouchers that were not proper charges against the spoliation claims?

Mr. Thomas objects to the question as calling for the opinion of the witness.

Q. State what the charges are for? A. The vouchers are for sundry small items such as stamps, telegrams, express packages, and servant hire.

Q. State whether or not those expenses were incurred in or about the conduct of the French spoliation claims, or in connection with Mr. Earle's private business? A. They were all incurred in connection with the French spoliation claims.

Mr. Gittings offers the two vouchers in evidence.

Mr. Thomas objects.

Q. Have you vouchers 60 and 61? A. Yes sir. Those vouchers are for rent.

Q. For what months and for what year? A. Voucher 60 is for the month of September, 1885, and voucher 61 is for August 1885.

Q. What does the voucher show the rent of the rooms was? A. Forty-five dollars, and voucher 60 shows that of that rent two-thirds was charged to French spoliation claims, being $30.33, the
119 sum of fifty cents for gas being charged in addition. Voucher 61 shows on its face rent of forty-five dollars and I will be obliged to look at the book to see if the full charge of forty-five dollars is charged against the spoliation claims.

Mr. Thomas objects for the same reasons as stated before.

WITNESS: Voucher 61 shows a receipt for $45.00, two thirds of that or $30.00 was charged to the spoliation claims cases.

Q. Have you voucher 63, and what does it show? A. That is a bill from Rhodes & Simms for a pigeon-hole case to contain French spoliation papers only.

Mr. Gittings offers the voucher in evidence.

Mr. Thomas objects upon the same grounds as stated before.

Q. Have you voucher 74 for sundries? A. Yes sir.

Q. State whether the charges in voucher 74 were about French spoliation claims? A. All the charges were entirely about the French spoliation cases.

Mr. Gittings offers the voucher in evidence.

Mr. Thomas objects for the same reasons given above.

Q. Have you voucher 75, and what is it for? A. I have, it is a receipt for the payment of rent of forty-five dollars, of which thirty dollars was charged against the spoliation claims.

Mr. Gittings offers the voucher in evidence.

Mr. Thomas objects on the grounds that it is immaterial and not proper in this account, it being Mr. Earle's office expenses.

120 Q. Have you voucher 88 for sundries? A. Yes sir. (Produces voucher.) The charges are for the spoliation cases and no other purpose whatever.

Mr. Thomas objects upon the same grounds as before.

Q. Have you voucher 89? A. Yes sir, it is for rent and gas, of which two-thirds was charged to the French spoliation cases.

Mr. Gittings offers the voucher in evidence.
Mr. Thomas objects for the same reasons as given heretofore.

Q. Have you voucher 101? A. Yes sir, it is one of the vouchers for sundries. All of the items were for spoliation cases and no other purpose.

Mr. Gittings offers the voucher in evidence.
Mr. Thomas objects for the same reasons as given before.

Q. Have you voucher 102? A. Yes sir, it is a voucher for rent amounting to $315.00 two-thirds of it being charged to the spoliation claims.

Mr. Gittings offers the voucher in evidence.
Mr. Thomas objects for the same reasons given before.

Q. Have you voucher 108? A, Yes sir, it is for the sum of seven hundred dollars paid to Innis N. Palmer for clerical services and making translations, for the month of February, March, April,
121 May, June, July and August. The services performed by General Palmer were solely connected with the prosecution of the French spoliation claims.

Mr. Gittings offers the voucher in evidence.
Mr. Thomas objects to the voucher as an improper charge in this accounting.

WITNESS: The translations referred to in voucher 108 were necessary to be made in order that the cases could be prepared. They were translations generally of French or Spanish official papers from the prize courts that had jurisdiction of the vessels, and were mostly in the language known as the West Indian patois.

Mr. Thomas objects to the witness stating his opinion.

Q. Have you voucher 113? A. Yes sir, it is a voucher for sundries and they were all entirely for the French spoliation claims.

Mr. Gittings offers the voucher in evidence.
Mr. Thomas objects.

Q. Have you voucher 114? A. Yes sir, it for the sum of forty-five dollars paid to Mr. Willard for rent, two-thirds of which is charged against the French spoliation claims.

Mr. Gittings offers the voucher in evidence.
Mr. Thomas objects.

Q. Have you voucher 126? A. Yes sir, it is signed by Mr. James M. Johnston, for $14.75 paid him for certified copies of papers in the case of W. W. Corcoran *vs.* The United States. Mr. Corcoran had a

claim under the French spoliations and the amount has been recovered and paid. The certified copies of the papers for which
122 the sum was paid Mr. Johnston were part of the records in the court here, necessary to be filed in the Court of Claims.

Mr. Gittings offers the voucher in evidence.
Mr. Thomas objects.

Q. Have you voucher 129 for sundries? A. Yes sir, it is one of the sundries vouchers and amounts to $16.55. There is a separate receipt attached to this voucher from C. B. Thompson for typewriting amounting to $5.00, of this separate receipt only $2.25 is charged to French spoliations, the remainder being for Mr. Earle's private purposes.

Mr. Gittings offers the voucher in evidence.
Mr. Thomas objects.

Q. Have you voucher 130? A. Yes sir, it is the same as the other vouchers for rent.

Mr. Gittings offers the voucher in evidence.
Mr. Thomas objects.

Q. Have you voucher 142? A. Yes sir is a voucher for rent.

Mr. Gittings offers the voucher in evidence.
Mr. Thomas objects.

Q. Have you voucher 143? A. Yes sir, it shows the sum of $10.15 for sundries, and is just like the other vouchers of that character, all entirely for the spoliations cases.

Mr. Gittings offers the voucher in evidence.
Mr. Thomas objects.

Q. Have you voucher 150? A. Yes sir, that is for a Remington typewriter and was used in the office for French spoliations work.

Mr. Gittings offers the voucher in evidence.
123 Mr. Thomas objects.

Q. Have you voucher 153? A. Yes sir, it is for rent for the month of April, 1886.

Mr. Gittings offers the voucher in evidence.
Mr. Thomas objects.

Q. Have you voucher 158? A. Yes sir, it for two hundred dollars paid Clark & Stewart in Baltimore as their retainer in the cases of Van Kopp, Anaspach, Brum and Ambrose Clark.
Q. Were they French spoliation cases? A. Yes sir.

Mr. Gittings offers the voucher in evidence.
Mr. Thomas objects.

Q. Have you voucher 163? A. Yes sir. It is a memorandum of

the amount paid Mortimer A. Downing for clerical services and was entirely for French spoliations, that was all the work he did.

Mr. Gittings offers the voucher in evidence.
Mr. Thomas objects.

Q. Have you voucher 165? A. Yes sir, it is for sundries amounting to $6.78, entirely for postage with the exception of fifty cents for telegrams. There were two postage accounts kept in Mr. Earle's office, one for the French spoliations account and the other for his own account.

Mr. Gittings offers the voucher in evidence.
Mr. Thomas objects.

Q. Have you voucher 166? A. Yes sir, it is for rent, gas and janitor's services amounting to $48.25, and was paid to Mr. Willard, of that amount two-thirds was charged against the spoliations cases.

124 Mr. Thomas objects.

Q. Have you voucher 269? A. Yes sir, this is a memorandum of the amount paid Mortimer A. Downing, and I repeat my testimony as to the other Downing item.

Mr. Gittings offers the voucher in evidence.
Mr. Thomas objects.

Q. Have you voucher 170? A. Yes sir, it is for sundries, mostly stamps, all charges in this voucher are exclusively for spoliations claims.

Mr. Gittings offers the voucher in evidence.
Mr. Thomas objects.

Q. Have you voucher 171? A. Yes sir, for rent.

Mr. Gittings offers the voucher in evidence.
Mr. Thomas objects.

Q. Have you voucher 173? A. Yes sir, it is for an amount paid Milans. I had charge of that part of the business, the bill was audited and compared by me at the time the printed matter was returned to the office by Milans. It is almost exclusively for the printing of the petitions in the French spoliations cases and the other matters charged in the bill such as arguments briefs and calls, in short, all items in this bill were exclusively French spoliations and nothing else.

Mr. Gittings offers the voucher in evidence.
Mr. Thomas objects.

Q. Have you voucher 180? A. Yes sir, it is for sundries amounting to $38.66, there is also attached to it sub-vouchers for
125 some of the amounts included therein, all the items were exclusively for French spoliations claims.

Mr. Gittings offers the voucher in evidence.
Mr. Thomas objects.

Q. Have you voucher 181? A. I have not the voucher here. It is for rent and is like all the other vouchers for rent, it was for July 1886.

Mr. Thomas objects.

Q. Have you voucher 183? A. Yes sir, it is the amount paid Archibald Hopkins chief clerk of the Court of Claims.

Mr. Gittings offers the voucher in evidence.

Q. Have you voucher 185? A. Yes sir, it is for sundries and was for the French spoliations claims.

Mr. Gittings offers the voucher in evidence.
Mr. Thomas objects.

Q. Have you voucher 189? A. Yes, sir; it is for rent.

Mr. Gittings offers the voucher in evidence.
Mr. Thomas objects.

Q. have you voucher 197? A. Yes sir, it is a voucher for rent.

Mr. Gittings offers the voucher in evidence.
Mr. Thomas objects.

Q. Have you voucher 198? A. Yes sir, for sundries.

Mr. Gittings offers the voucher in evidence.
Mr. Thomas objects.

At this point a recess is taken until one o'clock p. m.

126 FRIDAY, *October 4th*, 1901, 1 p. m.

Hearing after recess.
Present: Mr. Thomas, Mr. Earle, Mr. Gittings.

THEODORE J. PICKETT—examination continued by Mr. Gittings.

Q. Have you the several vouchers from 197 up to 781 which refer to the rent? A. I have vouchers 213, 219, 238, 256, 275, 286, 303, 319, 348, 379, 384, 410, 439, 469. These all refer to rent.

Mr. Gittings offers the vouchers in evidence.
Mr. Thomas objects.

Q. Have you the several vouchers from 198 to 781 which refer to sundries? A. I have several vouchers from 198 to 781 which refer to sundries. I have vouchers 152, 221, 237, 255, 312, 317, 340, 349, 703, all of which appear to be for sundries and are of the character as I have heretofore testified to as sundries.

Mr. Gittings offers these vouchers in evidence.
Mr. Thomas objects.

Q. Have you all the vouchers of Mortimer A. Downing for services from voucher 215 to voucher 781? A. I have but one memorandum of amount paid to Mortimer A. Downing, known as No. 215, in addition to those as to which I have heretofore testified. I have produced all the vouchers that were marked by Mr. Thomas on the account. I would add that any items as shown in there paid to Mortimer A. Dowiing were paid as shown by the vouchers.

Mr. Gittings offers the voucher in evidence.
Mr. Thomas objects.

127 Q. Have you all the vouchers relating to the payments made to J. D. Milans? A. I have all the vouchers marked by Mr. Thomas paid J. D. Milans and other printers, these are Nos. 199, 229, 244, 293, 297, 323, 372, 422, 440, 565, 566. These vouchers were paid for printing of French spoliation cases or matters relating to French spoliations only.

Mr. Gittings offers the vouchers in evidence.
Mr. Thomas objects.

WITNESS: I have heretofore testified as to one voucher of amount paid to Innis N. Palmer. I now produce voucher 307 which was paid him for services rendered in and about the French spoliation claims, principally translating and copying papers in the French spoliation cases.

Mr. Gittings offers the voucher in evidence.
Mr. Thomas objects.

Q. Have you vouchers 502 and 503, payments to the "Capital" and what do they relate to? A. Yes sir, those vouchers were for printing in the French spoliations claims, copies of papers, &c. The indebtedness was incurred as a contingency.

Mr. Gittings offers the vouchers in evidence.
Mr. Thomas objects to the charges as improper ones.

Q. State what was the matter you had printed in these vouchers? A. These vouchers were for printing matter relative to the claims, in the Capital newspaper, and also for a card stating that Mr. Earle was conducting the prosecution of the claims, and for copies of the papers in wrappers.

Q. What was the purpose of the advertisement? A. To further the claims, to secure claims, and also to advocate the payment of the claims.

128 Mr. Gittings again offers the vouchers in evidence.

Mr. Thomas objects to the items as not proper for printing and advertising under the agreement.

Q. Have you voucher 529? —. Yes sir. Mr. Lovering was a grandson or great grandson of Joseph Taylor who was an insurance broker in the city of Boston, and he had in possession a large num-

ber of papers proving the various cases. The voucher is for the amount paid Mr. Lovering for arranging and comparing the evidence that he had relating to these claims. The use of these papers enabled Mr. Earle to recover for a large number of claims and for a large number that will be recovered in the future. Mr. Lovering was summoned as a witness in the Court of Claims and produced the papers and accounted for their custody and identified them. His deposition is printed and covers a number of pages; the evidence produced by him has been partly printed, that part which has been printed relates to a great many cases and makes a number of large pamphlets, and a great part of it has not yet been printed. It was of great value to the claimants and was productive of a large amount of fees in that it proved a great many cases in which otherwise there was no evidence.

Q. Have you a copy of the printed matter? A. I have several copies referred to by me in my last answer, the evidence is furnished by Mr. Taylor which is used constantly all the time in these cases. The petitions filed to cover these cases in his office were I think considerably over two hundred which involved the interests of a large number of people.

Mr. Gittings offers the voucher in evidence.

129 Mr. Thomas objects.

Q. Have you voucher 542? A. Yes sir, this is for the payment of $88.65 to Sarah A. Huntington. I cannot state further as to what it is, as it was some ten years ago and I do not happen to recollect this particular one. I can only say it was paid in and about the French spoliation claims.

Mr. Gittings offers the voucher in evidence.

Mr. Thomas objects.

Q. Have you voucher 565? A. I testified as to all those vouchers under the head of printing. In addition to what I testified in regard to the Lovering matter I would like to state that it also consisted of a large number of books of accounts, office copies of policies as they were known, large books larger than an ordinary size ledgers. The papers produced by him were the entire papers of the Taylor office at that time probably with the exception of the office of Peter C. Brooker, the largest insurance office in the country, and policies on these various vessels and cargoes were underwritten in that office on the vessels seized by the French, and before payment was made by Mr. Taylor the assured had to produce the protest of the master of the vessel and certified copies of the decrees of the court that condemned the vessel and such other evidence that was satisfactory to Mr. Taylor, the office keeper, that the loss had occurred. It was this evidence that Mr. Lovering arranged and identified, accounted for its custody, and produced in the Court of Claims, and on that evidence the favorable findings were made by the Court of Claims in a large number of cases.

130 Mr. Thomas objects to testimony as to what the Court of Claims founded their findings upon, and also to the question.

Mr. Gittings states that the defendant reserves the right to produce the copy of Mr. Lovering's evidence.

Q. Are you familiar with the Causten papers? A. I am.

Q. State whether they were of any benefit to the prosecution of these cases or not.

Mr. Thomas objects and the objection is sustained.

Q. State whether or not the Causten papers alone were sufficient to obtain judgments in the several French spoliation cases which were prosecuted by Mr. Earle?

Mr. Thomas objects and states that his objection is based upon the fact that Mr. Lovering was not a lawyer and could have been produced by summons or a commission appointed.

The objection is sustained.

Mr. Gittings notes an exception.

Q. You have thoroughly examined the Causten papers? A. Yes, sir.

Q. State whether or not there is any evidence in the Causten papers which could have been used in the prosecution of the cases in which Peter Brooks appears as assignee?

Mr. Thomas objects and the objection is sustained.

Mr. Gittings notes an exception.

Cross-examination.

By Mr. THOMAS:

Q. Did you testify about these large sums paid to, Conger
131 & Son and others? A. Yes sir, I testified about all of them.

Q. Do you know of your own personal knowledge that Conger & Son made any argument and filed any printed briefs before Congress in these claims? A. I have seen the printed briefs prepared by Conger & Son.

Q. Before what committees? A. I suppose the Committee on Claims.

Q. Do you know whether Mr. Phil. B. Thompson made any oral argument before the committee? A. I cannot recall any particular time on which he did so, but have no doubt but what he did so.

Q. You have no personal knowledge of it? A. I was not present.

Q. You know Walter S. Hutchins? A. I cannot say that I do very well.

Q. Do you know whether he is a lawyer? A. I do not.

Q. Do you know of your own knowledge whether he ever made any oral arguments before Congress or the committees, or sub-

mitted any printed briefs in Ergood & French spoliation cases? A. No sir.

Q. Now as to Frank P. Morgan, what do you say he did? A. I testified that Mr. Morgan was employed to assist in the claims and that he was paid the amount as charged.

Q. What do you know of his services? A. I do not know further than that he was employed to advocate the passage of the bill by such arguments as he could bring to bear.

132 Q. Is he a lawyer? A. I do not know.

Q. Do you know of your own personal knowledge whether he made any arguments or filed any briefs? A. I was not present when he did so.

Q. Do you know H. W. Worthington? A. I know him by sight.

Q. Do you know whether he is a lawyer? A. He claims to be a lawyer.

Q. Do you know of your own personal knowledge that he made any oral arguments before the committees or filed any briefs before the committees of Congress in Ergood & these claims? A. I was not present when he did so.

Q. Do you know William McAdoo? A. Yes sir.

Q. Do you know of your own personal knowledge whether he ever made any oral arguments or filed briefs before the committees of Congress in Ergood and these cases? A. I do not, I have heretofore testified that the services Mr. McAdoo rendered was in placing a case in Mr. Earle's hand.

Q. Now as to H. D. Money, have you any personal knowledge that he made any oral arguments or submitted any printed briefs in support of these claims before committees of Congress? A. I was not present when he did.

Q. Now as to the payment of R. B. Bradford, was he a lawyer? A. I do not know.

133 Q. Do you know whether he made any oral argument or submitted any briefs before the committees in regard to the French spoliation claims? A. I know that Mr. Bradford went to the Capitol on numbers of occasions as well as these other gentlemen mentioned, for the purpose of presenting the claims before the committees or the special committees, and whether they did or did not make arguments I do not know as I was not present, I do know that they went for that purpose.

Q. But whether he performed any services you do not know? A. I know that he went to the Capitol to render that service and that is the same as to the other gentlemen.

Q. What is the amount due to T. J. Pickett for? A. For clerical services performed in the office of Mr. Earle up to the time I was admitted to the bar, and after that I was admitted as associate counsel. I received $100. a month.

Q. When you rendered clerical services how much did you receive a month? A. The same.

Q. How many months were you employed? A. I went in Mr.

Earle's office I think in June or July 1885 and staid there with him until his death with the exception of several months when the matter was not looking very promising when I left and opened an office with James L. Pugh, Jr., and then after the appropriation of 1891 was made I returned with Mr. Earle.

Q. As to this item of two thousand dollars to Dudley & Michener, do you know of your own personal knowledge that they ren-
134 dered any services in making any oral argument or submitting any briefs to the committees in Ergood & these claims? A. I was not present.

Q. The payment to C. R. Shelley, do you know of your own personal knowledge whether Gen'l Shelley rendered any legal services before the committees of Congress? A. My knowledge of his services is exactly like that of the others.

Q. Who was L. B. Clark? A. He was employed by Mr. Earle to make some searches among the custom house records in Connecticut and Rhode Island and those services related exclusively to the claims as the court requires that the American character of the vessels must be proven by the registers, and the cargoes are proven by the manifests.

Q. Was Mr. Clarke in Government employ? A. No, Mr. Clark made search of those records on that principle in Connecticut, Rhode Island and Massachusetts.

Q. He was not a lawyer? A. Not that I know of.

Q. He was not employed in Mr. Earle's office? A. No, sir.

Q. Do you know anything about the item of $2,133.80 cost of suit against Clarke, *et al.?* A. Nothing.

Q. Was Innis N. Palmer a clerk employed in Mr. Earle's office during the prosecution of these claims? A. He was a clerk in that he performed clerical services but more especially engaged in translations.

Q. He was a retired army officer? A. Yes sir.

135 Q. He is dead now? A. Yes, sir.

Re-direct examination.

By Mr. GITTINGS:

Q. State whether as a matter of fact you know that the amounts represented by these vouchers were paid by Mr. Earle or not? A. Yes, sir, they were paid.

By Mr. THOMAS:

Q. Do you know why Mr. Earle did not take the receipts of the parties he paid these moneys to? A. I think Mr. Earle generally paid those matters by check. Mr. Downing, one of the parties who has an unsigned voucher there was a friend of mine and I saw him paid.

Q. I notice a great many of the vouchers are in the same handwriting? A. Yes sir, mine.

Q. When were they made? A. They were made by keeping them on a little slip of paper and at the end of the month we would make out the cash account.

Q. Now vouchers 58 and 108 neither of them are signed and are in the same handwriting. Wher were they made out? A. They are in my handwriting and I made them out at the time the items were paid out. I had a slip of paper and put the things down as I got them, these are the same slips that were shown to Mr. Waggaman and——

Mr. Thomas objects to the last part of the answer.

136 HENRY M. EARLE, having been recalled for further examination testifies as follows:

By Mr. GITTINGS:

Q. State what this item in the account is, "Cost suit against Clarke *et al.*"

Mr. Thomas objects to the item as not a proper charge in this accounting.

A. Just after the last appropriation my father died. Some years before that he had a contract with Clarke & Simms for the cases. They took the grounds that they were entitled as surviving partners to take all the funds and wrote me that they were going to file a suit. I negotiated with them for some time trying to have the matter left to an arbitrator or to some trust company; finally as they would not agree to that I brought an action as necessary to establish the right of the Earle and Causten estates to these claims. Finally they agreed to the appointment of two receivers who were to act without compensation, the matter to be left to two arbitrators. The arbitrators were Mr. A. S. Worthington and Mr. H. E. Davis. I was authorized by the court to employ counsel and a great amount of testimony was taken, and the court finally decided the matter by giving nearly all the money to the Earle estate and consequently the Causten agency. The item of $2,133.80 makes up the aggregate of costs actually incurred in that matter, and when this account was rendered to Mr. Waggaman the letter which accompanied it stated that any of these matters could be explained.

Mr. Thomas objects to the items of *of* costs in the Clarke suit.

137 Mr. Gittings reserves the right to put in the findings of the arbitrators and the records of the orphans' court.

Q. State what other business your father had at the time he undertook the prosecution of these French spoliations cases, from the time he commenced up to the time of his death. A. My father moved to Washington to make a specialty of Supreme Court cases. About two years after he had been living here he took up the matter

of French spoliations and from about the time this contract was made with the Waggaman estate he gave up all business, moved from the Corcoran building to the Kellogg building, and gave up all other business. I was there as a clerk for two years and know that he gave up all other business. It took him over a year to prepare the briefs for the Court of Claims. He stated to me often that he regretted taking the matter up. During this time he completed several of these cases in the Supreme Court, but with the exception of that and two or three others, and two or three small cases in the supreme court of this District, he had no other business of any nature. Several years subsequent to the time of the first appropriation I remember one matter that he had of considerable size and importance, that was the case of Mrs. Mercer against trustees, that was during the time that Congress had failed to make appropriations. It was a cause of great regret to him that he had given up his time to these matters.

Q. State whether or not you have searched for the checks and check books of your father since the last time you testified in this case? A. When I moved from 1407 G street I had all these
138 checks and check books in a large case in my office on 4½ street. Some years afterwards I moved to New York and took a clerk named Ricketts with me, I went before he did and wrote to him to bring up this case. I had been keeping them for some years and I expected Ricketts to keep the papers but he sent the case without sending the papers.

Q. Was this prior or subsequent to the appropriation of 1899? A. This was in June 1898.

Hearing is adjourned subject to notice.

TUESDAY, *Dec.* 31, 1901—11 a. m.

Hearing pursuant to notice.

Present: Mr. Thomas, Mr. Williamson, Mr. Gittings.

THEODORE J. PICKETT, having been recalled by Mr. Gittings testifies as follows:

By Mr. GITTINGS:

Q. Do you now recollect what voucher 542 to S. A. Worthington for $88.65 was for? A. Yes sir, that was a voucher that I did not remember very distinctly when I testified about it before, but it was in payment of depositions taken to prove identity and the next of kin of some of the complainants, in which a gentleman by the name of Huntington had some interest.

Q. In your former testimony you were requested to produce the contracts existing in which Mr. William E. Earle had an interest, which contracts were not in his possession, and which you spoke of as the contracts in the possession of Samuel Stevens estate.
139 Have you now those contracts? A. Yes sir. These contracts relate to the claims known as the Shellabarger & Wilson

cases, as that is the way we distinguish them in the office. I have those contracts which were handed to me by Mr. Hoehling who had charge of them, as executed of the estate of Mr. Stevens. Mr. Stevens in his life time having charge of these contracts. That package as I received it from Mr. Hoehling contains vouchers numbered from one to one hundred. The package has not been opened by me since I received it.

Mr. Gittings states that the contracts are produced in response to the call made by the former hearing.

Cross-examination.

By Mr. THOMAS:

Q. These are the contracts in which Shellabarger & Wilson had an interest with Mr. Earle? A. Yes sir and Mr. Stevens. So far as I know without comparing them there may be some more contracts.

By Mr. GITTINGS:

Q. Subsequent to the death of William E. Earle who prosecuted the French spoliation cases in which he had an interest? A. They were prosecuted by W. T. S. Curtiss and myself and in some of the cases by Henry M. Earle.

Q. How did you become interested in the process of these cases subsequent to Mr. Earle's death? A. We made a contract with Henry M. Earle, executor of his estate.

Q. Have you that contract with you? A. Not the original. That is in the possession of Mr. Curtiss and not expecting to testify
140 this morning, I did not get it from him and he had left the office when I got your message. I produce a copy of it which has been compared both by the man who wrote it and also by myself and Mr. Curtiss and I know it is correct.

Mr. Gittings offers this contract in evidence and a copy of it is filed, marked "Exhibit T. J. T. Dec. 31, '01, No. 2."

Counsel for the complainant states that they have no objection to the filing of the copy in place of the original with the reservation that it shall not in any wise affect the rights of the Causten heirs under the contract.

Q. State whether any separate contracts with the claimants were made by you and Mr. Curtiss subsequent to the death of William E. Earle. A. In the cases where Mr. Earle was the sole attorney, the various claimants have given the power of attorney to Mr. Curtiss, myself and Henry M. Earle, to continue the prosecution of the claims.

Q. Have you examined the Causten papers? A. Yes sir.

Q. Are you familiar with them in detail? A. Yes sir.

Q. Do they contain any papers in relation to any claim which of itself would be proof in cases pending before the Court of Claims?

COPY BOUND CLO

Mr. Thomas and Mr. Williamson object. The objection is overruled, and the testimony admitted for the purpose of showing the necessity of taking of proof in support of these spoliation claims not contained in the Causten record.

A. I say in answer to the question that there is but one case that I can call in which the Causten papers contained record
141 evidence sufficient to establish a case and in this case it was not complete. I think we had to obtain other papers from the Treasury Department; they were not absolutely complete. They do also contain some other evidence that was material in proving some of the cases. Their chief value consisted of a list of persons that Mr. Causten had collected who had suffered losses and with reference to another list which contained a list of vessels which they were supposed to have lost, but with the exception above there was no evidence and there were a great many claims in which they contained no evidence or no reference to it. The Causten papers with the exception of the one case contained no proof with which we could have gone into court and established the seizure and condemnation of the vessels without additional evidence.

Mr. Gittings offers in evidence the letter press copy of a letter dated March 31, 1893 from Thomas E. Waggaman to the late William E. Earle, which reads as follows:

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MARCH 31ST, 1893.

William E. Earle, Esq.

DEAR SIR: As you are aware, in company with my attorney, I have been engaged in examining your accounts in the Causten estate under the contract existing between us. I have made already some six or eight visits to your office and have completed the examination of the books containing the report of your receipts of fees in the spoliation cases. Latterly I have been directing my attention to the accounts and vouchers showing your disbursements. This part of the investigation has been attended with the greatest difficulty, as I have already intimated to you personally, owing to the manner in which the entries were made. Sometimes it takes five or ten minutes to find an entry relating to a given voucher, and frequently I have been unable to find any entry whatever, and have been compelled to lay aside a number of vouchers for future examination. Entries in your book of disbursements are not made in order of date but are scattered at random, and can only be found by search. Under these circumstances I have found it impossible, after earnest effort to complete the examination in the present condition of the book and vouchers.

143 What I suggest is this: That you will have the disbursements and vouchers recorded either in order of date or, if that be impossible, to have the vouchers numbered and recorded so as to

correspond with the entries. Were this done, I could complete in a very short time the examination.

It is also necessary that I should be informed what proportion of rent and janitor's fees you claim as chargeable against the Causten estate for the rooms in Kellogg building, and also for your present office. The charges as made, vary so that I am at a loss to understand the basis upon which they are made.

You will understand, I hope, that it is not my desire to put you to any unnecessary trouble, but simply to have the matter so arranged as to enable me to make an intelligent report to the court.

Please let me hear from you.

Yours truly,

(Signed) THOMAS E. WAGGAMAN.

Counsel for the defendant announces his testimony in chief as closed, reserving however the right to produce and offer in evidence the contracts which were exhibits to the equity suit between Henry N. Earle, administrator, *vs.* John Steward, and the finding of the court of arbitration in that case.

Mr. Gittings calls for the production of four letters from William E. Earle to Thomas E. Waggaman covering the period of the date of the first appropriation up to December 1892 in relation to this account.

144 The hearing is adjourned to Friday, January 10, 1902, until 11 o'clock a. m.

FRIDAY, *January 10th*, 1902.

Hearing pursuant to notice.

Present: Messrs. Thomas, Williamsom, Miller and Gittings.

ROBERT SCHRIVER, having first been duly sworn testifies as follows:

By Mr. THOMAS:

Q. Where do you reside? A. Cumberland, Maryland.

Q. Are you acquainted with the people connected with the Causten estate? A. The heirs, yes sir, I am one myself.

Q. Are you acquainted with the class of cases known as the French spoliations cases? A. In a general way.

Q. Were you acquainted with the late William E. Earle? A. Yes, sir.

Q. You were pretty well acquainted with him? A. I suppose you might say so, I knew him after he became connected with the French spoliations cases. I met him in regard to these cases.

Q. Do you remember about the time the first appropriation was made by Congress to pay the French spoliations awards? A. Yes, sir, I know of it.

Q. Will you state about the time that act was passed
145 whether you saw Mr. William E. Earle and had any conversation with him about these cases? A. Yes, sir, I saw him the day the act passed, I had gone to his office to see him.

Q. And you did see him? A. Yes, sir.

Q. And you had a conversation with him? A. Yes sir.

Q. What did Mr. Earle say, if anything, in relation to these cases?

Mr. Gittings objects and the objection is overruled.

Mr. Gittings notes an exception, on the ground that witness is a party in interest under the contract and Earle being dead, he can not relate conversations.

A. The conversation was naturally in regard to these cases as he had just come from Congress and I had gone to see him about them. He congratulated me and I congratulated him, and he then said that he had spent some money to the extent of twenty-four thousand dollars, and said that having done that sort of thing he thought it would only be proper on the part of the heirs of Causten to contribute a proportional part, and he named one-fourth of it. In other words he asked that the heirs on their part should contribute about six thousand dollars.

146 Q. Did he state what the nature of these expenses was? A. He spoke of it as expenses in putting the matter through Congress, pushing it and lobbying.

Cross-examination.

By Mr. GITTINGS:

Q. What is your business? A. President of the National Bank of Cumberland.

Q. What is your interest in the Causten estate? A. I suppose about one-twenty-fourth or something like that.

Q. How often had you met Mr. Earle? A. I suppose probably fifty times.

Q. Always in relation to these cases? A. Not necessarily in relation to them, but every time I came to Washington I went to see him to find how the cases were coming along.

Q. When was it that this conversation took place that you have related? A. On the day the bill passed. I do not know the exact date but I think it was in the spring of 1891 so far as I recall it.

Q. Do you remember what month? A. It was the day the bill passed.

147 Q. Can you give us the day of the month the bill passed? A. No.

Q. Where did this conversation take place? A. In Mr. Earle's office.

Q. Where was his office at that time? A. In the Kellogg building.

Q. On what floor? A. I am not sure but I think it was the third.

Q. Was it a front or back office? A. It was back, as well as I can recall it. I am uncertain about the position of his office but think it was in south-west wing.

Q. Was anybody else present at that time? A. I think Mr. Curtis came in with him.

Q. That was the Mr. Curtis employed by him at that time? A. Yes, sir; but whether he was present at this conversation I cannot say.

Q. Was anybody else there? A. I do not recall anybody else.

Q. Tell us the language that Mr. Earle used in this conversation? A. I don't believe that I can recollect Mr. Earle's words except in a general way. There was nothing to impress the particular language upon my mind, but the fact was strongly impressed because he asked me to see the others and find out what they would do. The impression he gave me was that he had used——

148 Q. You don't mean to say that he said that he had used any money in lobbying? A. My impression is that he used the word "lobbying." He said that he used $24,000 and he would like the heirs to contribute their proportion.

Q. Mr. Earle had no direct contract with you? A. No, sir; except through the administrators of the estate.

Q. Was he in the habit of discussing these matters with you? A. Yes, sir; in regard to the progress of the French spoliation cases.

Q. Did Mr. Earle ever discuss the matter of the contract with Thomas E. Waggaman with you? A. No. He talked with me the day the present contract was made with him, a change having been made from the previous contract between Mr. Earle and the administrators.

Q. What do you mean by saying, the day the bill passed? A. I mean the day it was passed by Congress.

Q. Had the bill been signed by the President? A. I do not know.

Q. Do you know that other bills had been passed by Congress and not signed by the President?

Mr. Thomas objects.

Q. Had you other conversations with Mr. Earle about this twenty four thousand dollars? A. Yes sir.

Q. What were they? A. His first proposition was that the heirs should contribute their one-fourth of the expenses, and he

149 asked me how I felt about it, and I said that I felt inclined to agree to it but could not answer for the others. But if he wished to inquire I would see the others and let him know. After that I saw the others, my brothers and sisters, and had talks with them and reported those conversations to Mr. Earle at a later day.

Q. How much later? A. Probably several months, I do not know exactly.

Q. Was it six months or a year? A. Oh, yes, I had probably a dozen talks and when I came to Washington I would tell him what I knew and he would tell me what he knew. Mr. Earle's first idea was that the estate was not bound to pay its proportion of these expenses but afterwards when he moved on the other street and I was still talking about this same matter with him his manner changed and he said it was a claim against the estate and he was prepared to push it and if necessary take it to the Supreme Court of the United States. That was after some of the heirs had refused to consent to it.

Q. Did he ever state to you in detail what the expenses were? A. No, sir.

Q. Did you know that he had employed Omar D. Conger and Son to write briefs? A. No, sir; I do not think he ever told me any of those details. He only told me in a general way what he was trying to do, but never told me about this matter until the bill had passed.

150 JOSEPHINE YOUNG, having first been duly sworn testifies as follows:

By Mr. THOMAS:

Q. Where do you reside? A. Washington.

Q. You are one of the parties interested in the French spoliations claims? A. Yes sir.

Q. Were you acquainted with the late William E. Earle? A. Yes, sir.

Q. Were you very well acquainted with him? A. Yes sir, pretty well in regard to this matter.

Q. Do you remember whether you ever had any correspondence with him about these claims? A. Yes sir, quite considerable.

Q. Look at this letter dated May 1st, 1891, addressed to "Dear Miss Young," and purporting to be signed by the late William E. Earle, and state whether you received that letter from Mr. Earle? (Hands witness the letter.) A. Yes, sir.

Q. Look at the letter which I now hand you, dated Washington, September 19th, 1891, addressed to you and purporting to be signed by William E. Earle, his signature being in typewriting, and state whether that is the original letter received by you from Mr. Earle? A. Yes sir.

Q. You received that letter in that condition through the mail? A. Yes sir.

Mr. Thomas offers the two letters in evidence and they are filed marked Exhibits Y. Jan. 10/02—1 and 2.

Q. State whether you ever had any conversations with Mr. Earle in regard to the French spoliations claims?

151 Mr. Gittings objects on the same ground as that raised to Mr. Shriver's competency, and the objection is overruled.

Mr. Gittings notes an exception.

A. Yes, sir; I did.

Q. How many? A. I cannot tell the number.

Q. Do you remember having any with him after the passage of the appropriation bill for these claims in 1891? A. Yes, sir; a day or two afterwards.

Q. What did Mr. Earle say to you in any of these conversations in regard to getting the bill through Congress? A. He said that he had been obliged to pay this $24,000 to get the bill through and said we ought to pay part of the expenses. He said that he could not force the payment but that we ought at least to pay one-fourth of the expenses. I declined, however, to do so.

Q. What did he then say? A. He said he thought it ought to be done, but that the expense was not incurred in an official way but was a private matter.

Q. Did he say to whom he paid these expenses? A. No, he said that he was obliged to pay the bill to get the matter through Congress.

Mr. Gittings states that he does not wish to cross-examine this witness.

152 JOHN C. GITTINGS having previously been sworn testifies further.

Sometime during the year 1899, after the appropriation by Congress, the attorneys in Baltimore who were interested in the French spoliations cases by virtue of a contract with William E. Earle, Messrs. John E. Semmes, John and David Stewart, Robert R. Brown, and Frank P. Clark, claimed that under the agreement with Mr. Earle the Earle estate would only be entitled to a *quantum meruit* out of that appropriation of 1899 in view of the fact that — was the duty of Mr. Earle to secure the appropriation under the agreement with them, and that he had died before doing so. They threatened to carry the money to Baltimore, and if we could not come to some understanding or amicable arrangement about it we would have to come there and fight them. I was requested, with Mr. D. W. Baker, to represent the Earle estate. We thereupon consulted with the attorneys representing the Causten estate, and also with the late Mr. J. M. Wilson. The outcome being that we prepared a certain bill which has already been offered in evidence. An injunction was issued restraining the people in Baltimore from collecting the fees from the Government pending the decision of the Court of Claims as to who should represent the claimants. Mr. Earle formally appeared as attorney of record. That was for the purpose of keeping the Baltimore people from getting the warrants. Argument was had and the outcome was that we finally entered into an agreement to arbitrate the differences with the Baltimore parties, and this paper

was prepared which I now desire to offer in evidence. I wish to state that this paper includes the agreement between the
153 Baltimore parties and Mr. Earle, and a subsequent agreement entered into, subsequent to the first appropriation, some differences having arisen.

Mr. Thomas objects for the reason that the paper speaks for itself.

Mr. Gittings offers this paper, and the findings of the arbitrators, in evidence, and they are filed marked Exhibits E. Jan. 10/02—1 and 2.

Cross-examination.

By Mr. WILLIAMSON:

Q. The award as made was carried out? A. Yes.

Q. And the Earle estate received their share of fees according to that award? A. Yes, and which has already been accounted for in their accounting, but that does not show the amount which went to Clark and Semmes. There is an exception to the payment of twenty-one hundred dollars paid as expenses in the suit of Henry M. Earle, administrator, *vs.* David Stewart *et al.*, and I desire to state that that money was paid to Mr. Baker and myself. A petition was filed in the orphans' court and that amount was allowed and paid.

By Mr. WILLIAMSON:

Q. Was the Causten estate, or parties representing them, made party to that petition? A. I do not recollect.

Call having been made for the production of four letters, and Mr. Williamson having stated that he was unable to find the originals, Mr. Gittings now offers in evidence the letter press copies of said letters.

Mr. Williamson objects.

154 Mr. Gittings withdraws his offer of the letters.

The hearing is then adjourned to Friday, January 17th, 1902, at 10 o'clock a. m.

SATURDAY, *April* 26, 1902—at 10 a. m.

Hearing pursuant to adjournment.

Present: Mr. Thomas for complainant, and Mr. Gittings for defendants.

Mr. THEODORE J. PICKETT, being recalled, testifies as follows:

By Mr. THOMAS:

Q. Mr. Pickett, referring to the Nicholas Gilman claims, what was Mr. Earle's fee in those cases? A. You mean the amount?

Q. The amount of his fee. A. Under act of '99 the amount of the appropriation was two thousand four hundred and ninety-eight dollars.

Q. Now what was the entire fee in the case? A. The entire fee was eight hundred and thirty-two dollars and sixty-seven cents.

Q. And what was Mr. Earle's share? A. Mr. Earle's share was $291.44 under the act of '91 the fee was $77.47, of which Mr. Earle's entire fee was $30.99.

Q. Now take the cases of Josiah O'Bear, Nathan Leach and Peter C. Brooks, Nos. 1999 and 2494 and state what Mr. Earle's share of the fees in those cases were? A. In the Peter C. Brooks, under act of '91 Mr. Earle's fee was $1407.39 and in the same case under
155 act '99 Mr. Earle's share was $1593.40. In the case of Nathaniel Leach appropriation made under the act of '99 Mr. Earl's fee was $10.50. The appropriation under the act of '99 Mr. Earl's fee was $113.71.

Q. William Smith, what was Mr. Earle's fee? A. Two appropriations of one thousand dollars each.

Q. John Granberry, what was the fee in that case, where he was sole attorney there? A. The case of John Granberry, the entire fee was $27.25 of which R. H. Baker and Son, attorneys, at law of Norfolk, Virginia, were entitled to one-fifth, or $5.45, leaving Mr. Earle's fee $21.70.

Q. John Carari—that case under the Baltimore cases, what was Mr. Earle's share? A. According to my figures Mr. Earl's fee should have been $1,370.24, then he also had an appropriation under the act of '91 and of the fee in that case Mr. Earl's share was $414.35.

Q. James A. Buchanan. A. James A. Buchanan. This also is a Baltimore case. Mr. Earl's share of the fee was $537.83.

Q. Now take the case of William B. Buchanan, what was Mr. Earl's fee in that case? A. The appropriation under the William B. Buchanan under the act of '99 has been stated as above, under the head of Smith & Buchanan, of which firm William B. Buchanan was a survivor.

Q. Take the case of Joseph Rodgers. A. Act of '99, in the case of Joseph Rodgers, Mr. Earle's fee was $111.11.

156 Q. James Barry—what was Mr. Earl's fee in that case? A. Mr. Earl's fee in that case was $2125.50, but there had been a retainer of two hundred dollars paid in this case which was deducted from the fee and the amount paid Henry M. Earl, administrator, was $1,925.50. Under the act of '91 the fee in the William Smith case to Earl was $83.34, under the act of '99 the fee to Earl was $166.67.

Q. The Thomas Amery? A. The Thomas Amery two one thousand appropriations. Under the act of '99 the fee in the Thomas Amery case was $500.00 and under the act of '91 the fee to Mr. Earl was $192.80.

Q. In the case of Charles Ghequiere, what did Mr. Earl get in that case? A. The appropriation in that case was $3849.16. It is one of the Baltimore cases. Mr. Earl's share of the fee was $449.08, gross fee was $1283.05, and Mr. Earl's share of that was $449.08.

Q. In the Smith and Buchanan case? A. That is one of the Baltimore cases and Mr. Earl's fee in that case was $4283.56.

Q. Samuel Williams, what was Mr. Earl's share in the fee of that case? A. In the Samuel Williams' case, act '99, the Earl fee was $184.75; that also is a Baltimore case, and was a settlement of the fees which are shown in equity cause No. 20,409, of the supreme court of the District of Columbia.

Q. Benjamin Williams, what was Mr. Earl's fee in that
157 case? A. The fee to Mr. Earl in that case, act '99 was $192.26.

Q. Take the case of William Patterson? A. This is also a Baltimore case. The appropriation was under act '99, and Mr. Earl's fee was $1361.51.

Q. George Ripold; take that case? A. The fee paid to the Earl estate in that case was $127.65.

Q. Now next, there is no rate of fees given in the Peter C. Brooks case? A. The contract was introduced here. The rate of fifteen per cent.

Q. Thomas Amery account, how much was the fee in that case? A. In the act of '91—that has already been stated. In the Francis Amery case Mr. Earl's fee was $987.31.

Q. The John Codman, what was his fee in that case? A. Act of '91, Mr. Earl's fee was $13.84.

Q. Moses Brown? A. His entire fee was $5.54.

Q. Take the William Stanwood case? A. William Stanwood, the entire fee, act '91, was $557.02, being a share of the gross fee paid Baker & Cornish, attorneys at law.

By Mr. GITTINGS:

Q. Mr. Pickett, looking over your testimony with reference to the amounts that were paid to the special attorneys I will ask you whether you know of your own knowledge, whether Omer D.
158 Conger & Son were paid the amount.

Mr. Thomas objects to the question on the ground that witness had already gone over that matter.

By Mr. GITTINGS:

Q. Mr. Pickett, state whether or not you know of payments having been made to Omer D. Conger & Son by Mr. Earl?

Mr. Thomas objects to that question because it has already been the subject of testimony with Mr. Pickett, heard and examined on that point.

Mr. Gittings withdraws his question.

By Mr. GITTINGS:

Q. Mr. Pickett, do you know whether any money was paid by Mr. Earl to Philip B. Thompson for services in prosecuting the French spoliation cases?

Mr. Thomas objects to that as witness has already testified to that point.

By Mr. GITTINGS:

Q. Mr. Pickett, if so, state the amount? A. Mr. Thompson assisted in the prosecution of the French spoliation claims. I saw Mr. Thompson coming to Mr. Earl's office and Mr. Earl gave him checks.

Q. You know the amounts? A. I cannot recall any specific amount at any one time, but on these payments I was directed by Mr. Earl to make entries of it.

Mr. Thomas objects as to what Mr. Earl directed witness to make entries on ground it is hearsay and inadmissible.

159 Q. Do you know Walter S. Hutchins—Mr. Pickett, can you testify specifically to any amounts paid to any of these gentlemen by Mr. Earl, who was designated as special attorney? A. Well, these gentlemen came there to the office and were given checks by Mr. Earl. I saw these checks when they were drawn several times and was told what the amounts were, but I cannot recall it on any certain day there was a certain check paid.

Mr. Thomas objects to what Mr. Pickett gives in evidence as to what he was told about those checks.

Q. Can you recall the amount of any check that was given to any one of these special attorneys that you saw? A. I cannot recall a check and say on a certain day. A check for one hundred dollars was given, but I do know there were checks for one hundred dollars and two hundred dollars given.

By Mr. GITTINGS: I will ask leave, your honor, to call these particular parties or pass upon the question of the book first, and if the book is ruled out as being proof of the payments, then I will go to the extent of calling these several gentlemen.

Hearing is adjourned to Friday, May 9, 1902, at 10 a. m.

160 FRIDAY, *May* 9, 1902—at 10 a. m.

Hearing pursuant to adjournment.

Present: Messrs. Thomas, Gittings and Miller.

Argument was continued by counsel for both sides and concluded, and the subject matter of reference submitted.

Met on Thursday, September 4th, 1902 at 10 o'clock a. m.
Present: Mr. S. T. Thomas and Mr. Irving Williamson for the complainant and Mr. Giddings for the defendant,

Whereupon WILLIAM T. S. CURTIS, was recalled and examined

By Mr. GITTINGS:

Q. Mr. Curtis, after Mr. Earle's death I believe you entered into a contract in conjunction with Mr. Pickett, with the Earle estate, to prosecute these cases that have not been completed? A. Yes.

Q. Will you kindly state what was necessary to be done after Mr. Earle's death in regard to the cases that were appropriated for by the act of 1899.

Mr. THOMAS: We object to that as immaterial. It does
161 not make any difference so far as the cost is concerned. It would have been Mr. Earle's duty to prosecute the cases and the probable duty of his estate to do the same thing; and if Mr. Curtis and Mr. Pickett were substituted, it is immaterial what they did.

The AUDITOR: Well, there being some doubt as to the materiality of this proof, I don't feel like excluding it at this point. I think I will allow the testimony to be taken subject to objection, and subject, if you like, to a motion to strike out.

A. When Mr. Earle died in August, 1894, Mr. Pickett and myself entered into an agreement with the Earle estate.

Q. That agreement is in evidence and you need not state the contents of it. A. I will not say what it was. Mr. Earle having died, the various clients were clamorous for their cases to be proceeded with and to prevent other attorneys getting hold of the cases on account of his death, we entered into correspondence at once with the various clients, and contracts and powers of attorney were given to myself, Mr. Pickett and Mr. Henry M. Earle.

Q. Was Mr. Henry M. Earle the administrator of his father's estate at that time? A. I think not. This was while Mrs. Earle was acting as administratrix of the estate that these contracts were en-
tered into with us. At that time the cases were only in the
162 position of findings of fact. No judgment whatever had been rendered in any case. The act of Congress of 1885 referring these cases to the Court of Claims, specifically provides that the action of the court in those cases shall be only in the nature of findings and that nothing whatever that the court might do would be binding upon Congress. These cases were not, therefore, judgments at all, but mere findings of fact subject to the approval of Congress. We thereupon immediately entered into an extended correspondence with the administrators and all of the heirs, urging them to communicate with their Congressmen and to present to them the subject of the claims, and urge that they consider them and if they thought them just to vote for them.

Q. What I want is, the answer to this question: Just state what was necessary to be done to realize upon those findings of fact under the several acts?

Mr. THOMAS: That is calling for the opinion of the witness. It was necessary to get an appropriation.

A. I will state what had to be done.

Mr. THOMAS: Objection withdrawn.

A. (continued). We also sent out thousands of circulars——

Q. What I asked for, Mr. Curtiss is this: What was the condition of the claims at that time? A. After the act of 1896 was vetoed, the act of March 3rd, 1899 was passed. That act carried with it two provisos, and one was that the money should not be paid.—

Mr. MILLER: The provisos will speak for themselves.

The WITNESS: I want to show what I did under the provisos.

Mr. MILLER: You cannot tell what the provisos says. We object to it.

163 A. (continued). The act of Congress carried with it two provisos which speak for themselves, and under those provisos we first had to file a motion in the Court of Claims asking for a certificate to the Secretary of the Treasury that the administrator did in fact represent living next of kin. That certificate had to be obtained before the money would be paid. We filed these motions in all the cases, and were obliged to take many depositions to establish the fact that the administrator did represent living next of kin and that such kin were living at the date of the passage of the act. And I took several trips to New England and to other parts of the country to take depositions establishing this fact. Then we argued the motions before the Court of Claims, and in most of the cases the motions were granted and the certificates were issued.

A. Now, Mr. Curtis, under one of the provisos of the appropriation act there is a provision that before the money can be paid there must be a certificate of the orphan's court to the effect that the administrator——

Mr. THOMAS: I object to that as certainly immaterial. There cannot be any doubt about that.

Mr. GITTINGS: Wait until I state the question.

Mr. THOMAS: Mr. Earle would have to do all this if he had lived.

The AUDITOR: Is not the testimony all subject to your objection as a matter for consideration afterwards.

Q. (continued)—that the administrator represented the next of kin of the original claimant, and a further proviso that he had given sufficient security. State whether or not that involved any
164 labor on the part of Mr. Pickett and yourself? A. In the first place the Court of Claims was required to give the cer-

tificate that the administrator represented the next of kin, as I just testified, which required great labor; and then we had to obtain from our clients throughout the country a proper certificate from the probate court showing that they had given adequate security for the legal disbursements of the awards. And these certificates were obtained by us either from the courts or from our clients throughout the country. And they had to be filed with the accounting officers of the Treasury.

Q. State whether or not that involved any labor, or whether it was a mere matter of form? A. It involved a great deal of labor, and in fact we had great difficulty in getting the courts throughout the country to give the certificate that was required by the accounting officers.

Q. State whether or not these facts had to be proved affirmatively before you could realize on the claims? A. We had to establish affirmatively to the Court of Claims that there were living next of kin and that the administrator represented them; and also we had to establish affirmatively that a sufficient bond had been given for the legal disbursements of the award covered by the appropriation act.

Q. There is another proviso in the appropriation act in regard to insurance companies. Was there any work involved in meeting that provision of the act? A. This act of 1899 provided that we must show that the claims were not held by assignment or that they were owned by any insurance company. In order to satisfy
165 the department and the court, we prepared and had sent to our various clients affidavits showing that the claims were held by them, not by assignment, but as representing the next of kin, and we encountered great difficulty in the Treasury, and had to resist opposition filed by counsel for the Government; and in one large case involving many thousands of dollars the Treasury Department, regardless of our labor, held that it was held by assignment and disallowed it, and we had to get a special act of Congress passed directing it to be paid. I refer to the Peter C. Brooks case. We also had to show that it was not held by an insurance company. All of this involved great labor and endless correspondence and interviews.

Q. State whether or not there was any question raised by the Treasury Department in reference to debts due the United States Government by the original claimant as being a set off against the claim, and whether you met any difficulty there? A. Before any of these cases were paid, counsel for the Government objected to their payment until he could ascertain and have set-off against the present claims any indebtedness of the original suffer-s to the Government on account of unpaid duty bonds that had been given away back between 1800 and 1820, many of these bonds having been found outstanding on the books of the Treasury. We resisted this and filed written arguments and orally argued the matter in opposition to the contention of the Government, holding that as this was

bounty or gratuity it could not be set-off against the present beneficiaries. In this we were sustained and payments proceeded with. All this required a great deal of labor before the
166 money could be paid.

Q. These claims were appropriated for in 1899, Mr. Curtis. Were they the same claims for which a bill was passed in 1896 and vetoed by President Cleveland? A. The bill that was passed in 1896 and vetoed by President Cleveland I think included all the cases covered by the act of 1899; in other words it was a repetition of the act that had been vetoed.

Q. Now, Mr. Curtis, state whether or not, after Mr. Earle's death, you met with any difficulty in getting an appropriation for the payments of claims which had been certified to Congress prior to his death? A. Most decidedly. We had great difficulty in getting the act of 1896 passed; and then when the veto came everybody thought that was the end of them, and we thereupon began a systematic plan of showing to the public the errors in the veto, and succeeded in 1899.

Q. You say systematically? A. Yes.

Q. What do you mean by that? In what manner did you show it to the public? A. We prepared a very elaborate brief or statement as to the cases and sent them off by the thousands to our clients throughout the country, and they in turn sent them to their Congressmen.

Q. Was that once or twice or did you continue to do it? A. I kept it up from 1896 to 1899 when the act passed again, and President McKinley signed it.

167 Cross-examination:

Mr. THOMAS: Mr. Auditor, we move to strike out the testimony of the witness as incompetent and immaterial, and without waiving the motion and also our objection to the testimony on account of its immateriality, we will ask him two or three questions.

Q. Mr. Curtis, as I understand you, all the findings in these cases by the Court of Claims that were included in the appropriation act of 1899, had been made by the Court of Claims prior to Mr. Earle's death, had they not? A. I haven't looked at that but I think they all were—that is, the findings, of course.

Q. That is all the Court of Claims could do prior to the appropriation act of 1899? A. All they could do prior to the appropriation, but after the appropriation other work began.

Q. I didn't ask you that. Were there any other attorneys in this class of cases? A. Some.

Q. Did they assist in all this labor which you say took place after the appropriation act of 1899 was passed? A. What labor?

Q. Did they assist in this argument before the Treasury Department and the Court of Claims about the certificates you told us about? A. Not in any of our cases, no, sir. We were alone.

Q. But the same questions were raised in other cases than those you represented? A. Every case stood on its own bottom and we had to establish the facts in each case, and each case was dif-
168 ferent.

Q. Were they not substantially alike? A. No, sir.

Q. Were not the questions substantially alike in the other cases as they were in yours; I mean these questions that the Treasury Department raised and the Court of Claims raised? A. In the Treasury Department cases to which I referred we were the sole attorneys and made the sole argument.

Q. I am asking you about the other people. I am not asking you about any particular case, but the other cases.

Mr. GITTINGS: I think that is a fair answer. He said no other attorney had these cases.

The AUDITOR: He spoke of a particular case. Mr. Thomas asked him whether the general questions involved in those cases up to the findings of the Court of Claims were not the same in other cases as those represented by Pickett and Curtis?

A. In the question involving the certificates as to next of kin, it was purely a question of fact in each case, and we were unassisted, nor did the action in any other case affect the action in our cases.

Q. Now, Mr. Curtis, what I want to know is whether in these questions which you say arose before the Court of Claims and afterwards before the Treasury Department in regard to getting evidence that the present claimants were entitled to receive these appropriations, there were not other French spoliation cases in which other attorneys than you and Mr. Pickett were interested, and whether the same or similar questions did not arise in those other
169 cases, and whether the other attorneys did not participate in the argument and other business before the Treasury Department.

The AUDITOR: I think the question answers itself. You are referring to questions of fact which could not be the same. The evidence which would fit one case would not fit another, and argument would have to be made on the evidence. You are trying to get at some general issues raised by the Treasury Department and Court of Claims which affects all cases alike.

Mr. GITTINGS: That I understand Mr. Curtis to say, and one that did arise about the duty bounds being set-off, that he made the sole argument.

Q. Now, Mr. Curtis, there was not anything very different in the presentation of those cases to the Treasury Department to get them allowed from what they were in other cases? In other words, does the Treasury Department require you to furnish evidence in any claims that the party to whom the draft is issued is the party entitled to receive it.

Mr. GITTINGS: I object to that as immaterial.

The AUDITOR: I have been rather liberal in allowing this testimony, and I will give the other side the benefit of it.

A. In answer to that I will say most positively that there is a great deal of difference. This act carried with it a certain proviso that is not in any other act that I know of. In some cases in the Treasury Department you merely have to file an affidavit of identity that you are the man mentioned in the act, but in these cases here there were three or four requirements under the proviso that required us to travel over the country and take depositions,
170 and we argued the cases in the Court of Claims and before the Treasury Department. In other words, the mere obtaining of the findings was but a portion of the work.

Q. Is not that so in all cases of claims against the Government? A. No, sir. There was a special proviso in this act as to French spoliation cases that applied to no other. Double the work is required in French spoliation cases after Congress passed the act appropriating the money than in other cases.

Q. Suppose there was a case where findings were made in the Court of Claims, would the Treasury Department pay the claim on that finding without an investigation and without finding out who was the proper party to receive it? A. All that would be required would be an affidavit of identity, but in this case, unlike the Bowman Act cases, we had to go to the Court of Claims and file a motion for certificate showing that our administrator represented living next of kin and that there were next of kin living at the date of the passage of the act, which is not required by any other act.

Q. Do you mean to say that this act of Congress of 1899, appropriating money for these spoliation cases, is the only act that has such a proviso in it? A. It is the only act I know of, and I have never seen such another act.

Q. And have you examined carefully? A. I have.

Q. And you find this act peculiar and different from all the rest? A. I do.

171 Q. Now, Mr. Curtis, if Mr. Earle had lived, he would have had to attend to all this business to get these claims allowed by the Treasury Department?

Mr. GITTINGS: I object. That is a matter of law and asking the witness his opinion.

The AUDITOR: This is cross-examination. Objection overruled.

A. His contract speaks for itself.

Q. Would he have had to do all these things? A. He could not have been paid by the Treasury unless all these things were done.

The AUDITOR: You can answer that question.

A. I presume he would. Certainly it would all have to be done.

Mr. GITTINGS: That closes my evidence.

172 H. M. E.

Filed November 13, 1902.

French Spoliation Claims.

Estate of William E. Earle in account with the Causten estate.

	Cr.	Dr.
To expenses from July 9th, 1884 to November 1st, 1900	$61,445.46	
Fees received by Wm. E. Earle under appropriation act of Mc'h 3, 1891		$38,745.63
Fees received by est. of Wm. E. Earle under appropriation act of Mc'h 3, 1899 other than the cases embraced under the agreement with the Baltimore attorneys		32,431.41
Paid to Curtiss & Pickett, as per agreement, 30% of $32,431.14	9,729.34	
Received by est. of Wm. E. Earle under appropriation act of 1899 in cases under the Baltimore agreement		15,745.10
Paid 2½% of $15,745.10 to the Baltimore attorneys as per findings of the arbitrators in the case of Earle *vs.* Stuart *et al*	393.62	
Paid to arbitrators one-half of fee of $1,000.00	500.00	
Paid to said Stuart *et al.* per findings of the arbitrators	400.00	
Paid Curtiss & Pickett, as per agreement 30% on $14,451.48	4,335.44	

173

	Cr.	Dr.
Am't brought forward	$76,803.86	$86,922.14
Received under 1899 appropriation by settlement with George S. Boutwell and George A. King of Wm. E. Earle's fees in their cases in which he was interested		2,000.00
Paid to Curtiss & Pickett, as per agreement, 30% of $2,000.00	600.00	
	$77,403.86	$88,922.14
		77,403.86
Net fees		$11,518.28
Due the adm'r of the Causten estate 25% of $11,518.28	$2,879.57	

174 *The Baltimore Cases Appropriated for by Act of* 1899, *Collected by Frank P. Clark and J. M. Wilson, as Receivers in Equity Cause No.* 20,409.

Buchanan, James A.

No. 2008, ship Patapsco, Hill, pp. 38, claim $4,609.99

Fee 33⅓ % ½ to Earle estate	$768.33	
5 % of award to Wilson	230.50	
Net fees to Earle est	$537.83	$537.83

Buchanan, W. B.

No. 381, ship Jane, Wallace, pp. 37, claim $11,660.21
" 2011, " Patapsco, Hill, " 38, " 25,056.00

$36,716.21

Fee 33⅓ %, ½ to Earle est	$6,119.37	
Less 5 % of award to J. M. Wilson	1,835.81	
Net fee to Earle est		4,283.56

Causten, Isaac

No. 262, brig Rosetta, Isaacs, pp. 45, claim $490.00

Fee 33⅓ %, ½ to Earle est	$81.67	
Less 5 % of award to J. M. Wilson	24.50	
Net fee to Earle est		57.17

Carrere, John

No. 1850, schr. Eliza, Poulson, pp. 39, claim $11,744.96

Fee 33⅓ %, ½ to Earle est	$1,957.49	
5 % of award to J. M. Wilson	587.25	
Net fee to Earle est		1,370.24
		$6,248.80

175 Brought forward $6,248.80

Donnell, John

No. 211, ship Patapsco, Hill, pp. 38, claim. $6,659.99
" 262, brig Rosetta, Isaacs, " 45, " 1,960.00

$8,619.99

Fee 33⅓ %, ½ to Earle estate	$1,436.67	
5 % of award to J. M. Wilson	431.00	
Net fee to Earle est		1,005.67

Dugan, Cumberland

No. 262, brig Rosetta, pp. 45, claim $1,500

Fee 33⅓ %, ½ to Earle est	$250.00	
5 % of award to J. M. Wilson	75.00	
Net fee to Earle est		175.00

Ghequiere, Charles

No. 228, ship Juliana, Hayward, pp. 47, claim $3,849.16

Fee 33⅓ %, ½ to Earle est	$641.53	
5 % of award to J. M. Wilson	192.45	
Net fee to Earle est		449.08

Hillen, John

No. 262, brig Rosetta, Isaacs, pp. 45, claim $980.00

Fee 33⅓ %, ½ to Earle est	$163.33	
5 % of award to J. M. *Earle*	49.00	
Net fee to Earle estate		114.33

Hollins, John

No. 770, ship Jane, Wallace, pp. 37, claim	$4,922.00	
" 2011, " Patapsco, Hill, " 38, "	7,600.00	
	$12,522.00	
Fee 33⅓ %, ½ to Earle est	$2,087	
5% of award to J. M. Wilson	626.10	
Net fee to Earle est		1,460.90
		$9,453.78
176 Brought forward		$9,453.78

Holmes, John

No. 2337, ship Juliana, Hayward, pp. 47, claim $12,129.16

Fee 33⅓ %, ½ to Earle est	$2,021.72	
5 % of award to J. M. Wilson	606.46	
Net fee to Earle est		1,415.26

McKim, Alexander

No. 777, brig Confidence, Manning, pp. 39, claim $1,497.39

Fee 33⅓ %, ½ to Earle est	$249.56	
5 % of award to J. M. Wilson	74.87	
Net fee to Earle est		174.69

McCreery, Wm.

No. 262, brig Rosetta, Isaacs, pp. 45, claim $980.00

Fee 33⅓ %, ½ to Earle est	$163.33	
5 % of award to J. M. Wilson	49.00	
Net fee to Earle est		114.33

Payson, Henry

No. 262, brig Rosetta, Isaacs, pp. 45, claim $490.00

Fee 33⅓ %, ½ to Earle estate	$81.67	
5 % of award to J. M. Wilson	24.50	
Net fee to Earle est		57.17

Patterson, Wm.

No. 1088, schr. Betsey, Murphy, pp. 42, claim $20,334.16

Fee 22½ %, ½ to Earle est	$2,287.59	
5 % of award to J. M. Wilson	1,016.71	
Net fee to Earle est		1,270.88
		$12,486.11

177	Balance brought forward	$12,486.11

Smith, Samuel

No. 1003, ship Jane, Wallace, pp. 37, claim $6,738.21
" 2008, " Patapsco, Hill, " 38, " 4,609.99

$11,348.20

Fee 33⅓ —, ½ to Earle est	$1,891.37	
5 % of award to J. M. Wilson	567.41	
Net fee to Earle estate		1,323.96

Schroeder, Henry

No. 2882, schr. Phœnix, Coward, pp. 43, claim $1,227.44

Fee — %, ½ to Earle est.....		
5 % of award to J. M. Wilson	$211.37	
Net fee to Earle est.....	Never collected.	

Van Wyck, Wm.

No. 383, brig Rosetta, pp. 45, claim $6,024.96

Fee 33⅓ %, ½ to Earle est.....	$1,004.16	
5 % of award to J. M. Wilson.....	301.25	
Net fee to Earle estate.....		702.91

Williams, Samuel

No. 2293, brig Eleanor, Treat, pp. 39, claim $1,583.59

Fee 33⅓ %, ½ to Earle est.....	$263.93	
5 % of award to J. M. Wilson.....	79.18	
Net fee to Earle est.....		184.75

Williams, Benjamin

No. 262, brig Rosetta, Isaacs, pp. 45, claim	$980.00	
" 2293 " Eleanor, Treat " 39. "	1,583.59	
	$2,563.59	
Fee 25 %, ½ to Earle estate.....	$320.44	
5 % of award to J .M. Wilson.....	128.18	
Net fee to Earle est.....		192.26
		$14,889.99
178 Brought forward.....		$14,889.99

Williams, Joseph

No. 4155, schr. Charlotte, Lowe, pp. 44, claim $3,464

Fee 33⅓ %, ½ to Earle est. Next of kin proven only to one-half of claim, so that is all that has been paid, to wit.....	$1,732	
½ of 33⅓ % to Earle.....	$288.67	
5% of award to Judge Wilson.....	86.60	
Net fee to Earle estate.....		202.07

Young, Joseph

No. 784, brig Rosetta, Isacca, pp. 45 claim $5,597.46

Fee 33⅓%, ⅓ to Earle est	$932.91	
5% of award to J. M. Wilson	297.87	
Net fee to Earle est		653.04
		$15,745.10

Received of George S. Boutwell and George A. King in full settlement for services rendered by Wm. E. Earle, deceased, in their cases 2,000.00

179 *Fees Collected under the Act of March 3rd, 1899.*

Amory, Thomas

No. 3439, schr. Alert, Oliver, pp. 40, claim	$1,000	
" 3543, ship Hetty Jane, Neal, pp. 48, "	1,000	
	$2,000	
Contract, 25% Earle		$500.00

Boardman, William H.

No. 3663, schr. Thankful, Wm. Ward, pp. 36, claim	$400	
" 3510, sloop Fox, Brooks, pp. 40, claim	300	
" 3317, brig Betsy, Witmarsh, pp. 45, claim	1000	
" 3505, brig Endeavor, Freeman, pp. 48, claim	300	
	$2000	
Contract, S. & W. and Earle, 25% 1/3 to Earle		166.67

Bond, Nathan,

No. 3663, schr. Thankful, Ward, pp. 36, claim	$400	
" 3540, brig Hope, Church, pp. 39, claim	500	
	$900	
Contract, S. & W. and Earle, 22½%, ⅓ to Earle		67.50

Brooks, Peter C.

No. 1808, schr. Thankful, Ward, pp. 36, claim	$2000	
" 213, brig Vulture, Berry, pp. 40, claim	1500	
" 169, sloop Fox, Brooks, " " "	400	
" 330, " Nancy, Foster, " 41, "	1000	
" 261, brig Caroline, Morton, pp. 43, claim	5402.50	
" 236, brig Friendship, Hodges, 44, claim	2000.00	
" 1365, schr. Jane, Atwood, pp. 44, claim	2700.	
" 232, brig Betsy, Witmarsh, pp. 44, claim	3000.	
" 293, brig Hiram, Humphrys, pp. 46, claim	414.	
		$734.17
180 Brought forward		$734.17
No. 239, sloop Federal George, Hussey, pp. 49, claim	$2341.86	
No. 898, schr. Sea Flower. Farley, pp. 49, claim	487.06	
		$21,245.42
Contract, S. & W. and Earle, 15 %, ½ to Earle		1,593.41
Barry, James		
No. 133, scow Fanny, Barry, pp. 35, claim $8,502		
Contract 25 %, Earle		2,125.50
Bessom, Philip		
No. 386 schr. Hannah, Bessom, pp. 41, claim $23,180		
Contract S. & W. and Earle, 25 %, ⅓ to Earle		1,931.66
Cawper, John		
No. 1584, brig Eliza Wright, Ethridge, pp. 43, claim $148.65		
Contract 25 % Earle		37.16
Caldwell, John		
No. 131, brig Hope, Church, pp. — claim $12,412.17		
Contract 25 % with rebate of 5 % of fee to M. M. Parker and ⅛ of the net fee to Francis Parsons, Earle's net fee		2,358.31

Carson, James

No. 4626, ship Leeds Packet, Bunce, pp. 47, claim $1700

"South Carolina" contract, fee 12 % to Earle 204

Davis, William

No. 2897, schr. Lucy, Holmer, pp. 39, claim $992

Contract S. & W. and Earle, 25 %, ⅓ to Earle..... 82.66

$9,066.87

181 Brought forward $9,066.87

De La Roche, Frederick Frank

No. 1845, ship Theresa, Brum, pp. 41, claim.. $3,264.50
" 1846, brig Yorick, Moddie, " 42, " .. 7,886.50

$11,151.00

Contract 25% Earle..... ..... 2.787.75

Durant, Edward

No. 1464, ship Two Sisters, Henry, pp. 35 claim $294
" 1344, scow Boston, Dougherty, " 38, " 343
" 336, sloop Martha, McWilliams, pp. 42, claim 1,260

$1,897

Contract 25%. Earle 474.25

Fellows, Nathaniel

No. 1808, schr. Thankful, Ward, pp. 36, claim.. $1300
" 3540 brig Hope, Church, " 38, " .. 1000
" 213 " Vulture, Berry, " 40 " .. 1000
" 330 sloop Nancy, Foster, " 42 " .. 1000
" 236 brig Friendship, Hodges 44 " .. 700
". 1865, schr. Jane Atwood, pp. " " .. 500
" 293 brig. Hiram, Humphreys, 46 " .. 414

$5914

Contract 25%, ⅔ to Earle ⅓ to Williamson 985.73

Gardner, James

No. 2162, ship Leeds Packet, Bunce, pp. 47, claim $4,833.93
Contract 25%. Earle 1,208.48

$14,523.02

182	Brought forward		$14,523.02
	Gilman, Nicholas		
	No. 4659, schr. Alert, Oliver, pp. 40, claim	$300	
	" 3443, ship Betsy, Obear, " 41, "	198	
	" 3317, brig Betsy, Witmarsh, pp. 44, "	1000	
	" 3543, ship Hetty Jane, Neol, 48, "	1000	
		$2,498	
	Contract, Saml. Stevens and Earle and H. O. Cummings, 33⅓% Earle's share		291.44
	Greene, David		
	No. 3663, schr. Thankful, Ward, pp. 36, claim	$1000	
	" 3509, sloop Fox, Brooks, " 40, "	500	
	" 3543, ship Hetty Jane, Neol " 48,	1000	
		$2,500	
	Contract S. & W. and E. 22½% net. ⅓ to Earle		187.50
	Granbery, John		
	No. 1584, brig *Eliza Wright*, Ethridge, pp. 43, claim $109.01		
	Contract 25%. ⅛ of fee to R. H. Baker and Son, Earle's net fee		21.70
	Homer, Benj.		
	No. 3543, ship Hetty Jane, Neol, pp. 48, claim	$500	
	" 898, schr. Sea Flower, Farley, pp. 49, claim	243.53	
		$743.53	
	Contract 25% Earle		185.88
	Jackson, Daniel		
	No. 1973, schr. Lucy, Holmes, pp. 39, claim	$3,567	
	Contract S. & W. and E. 25% ⅓ to Earle		297.25
			$15,506.79
183	Brought forward		$15,506.79
	Jones, John C.		
	Taylor's O., No. 3439 sch. Alert, Oliver, pp. 40, claim	$300	
	Brook's O., No. 232 brig Betsy, Witmarsh pp. 44 claim	1000	
	Taylor's O. No. 3543 ship Hetty Jane, Noel pp. 48 claim	500	
		$1,800	

Contract on claims arising in Brook's office 15%
" " " " " Taylor's " 50%
Contract S. & W. & E. ⅓ to Earle..... 183.33

Leach, Wm.

No. 179, schr. Alert, Oliver, pp. 40, claim $3,577.88
Contract S. & W. & Earle 25% ⅓ to Earle..... 298.16

Leach, Nathan

No. 2494, ship Betsy, Obear pp. 40, claim $126
Contract S. & W. and Earle 25% ⅓ to Earle..... 10.50

McDonald, Wm.

No. 1761, schr. N*N*edham, Grant, pp. 42, claim $4,914
South Carolina case, fee 12% to Earle, less $1.48 pd. as bank charges..... 588.20

Meeker, Samuel

No. 1444, brig Lady Washington, Selleck, pp. 37, claim $709.80

Contract 25% to Earle	$177.45	
Less paid for deposition.....	27.40	
Net fee to Earle.....		150.05

Obear, Josiah

No. 1999, brig Betsy, Obear, pp. 41, claim $1,705.68
Contract S. & W. and Earle 20%, ⅓ to Earle..... 113.71

$16,850.74

184 Brought forward..... $16,850.74

Price, Chandler

No. 1444, brig Lady Washington, Selleck pp. 37, claim $709.80
Contract, Earle 3/5 of 25 % net..... 106.47

Pomeroy, S. W.

No. 3540 brig Hope, Church, pp. 39 claim...	$1000	
" 3509 sloop Fox, Brooks, " 40 " ...	500	
" 3438 schr. Alert, Oliver, " 41 " ...	600	
" 898 " Sea Flower, Farley, 40 claim	243.53	
	$2,343.53	
Contract S. & W. and Earle ⅓ of 25 % to Earle.....		195.29

Proudfit, John

No. 2345, ship Eliza, Burton, pp. 41, claim. $6,951

Contract 25 % Earle..... 1,737.75

Rodgers, Joseph

No. 3428, schr. Thankful, Ward, pp. 35, claim $1,733.33

Contract S. & W. and E. 25 %, ⅓ to Earle..... 144.44

Smith, Wm.

No. 3603, schr. Thankful, Wm. Ward, pp. 36, claim..... $1000

No. 3543, ship Hetty Jane, Neal, pp. 48, claim..... 1000

$2000

Contract S. & W. & E. 25 %, ⅓ to Earle..... 166.67

Stewart, Thomas

No. 2347, ship Hetty Jane, Neal, pp. 48, claim $6,061.93

Contract 25 % to Earle..... 1,515.48

Storer, John

No. 1066, brig Venus, Harmon, pp. 42, claim $10,568

Contract, 25 % Earle..... 2,642.00

Sontag, Wm. L.

No. 1844, ship Theresa, Brum, pp. 41, claim $13,537.50

$23,358.84

185 $23,358.84

No. 1845, ship Theresa, Brum, pp. 41, claim $3,264.50

" 1843, brig Yorick, Moodie, " 42, " 7,886.50

$24,688.50

Contract 25 % Earle..... 6,172.12

Tunno, Adam

No. 2160, ship Leeds' packet, Bunce, pp. 47, claim $21,167.80

South Carolina case. Earle's fee 12 % net 2,540.13

Turnbull, John

No. 2829, ship Leeds' packet, Bunce, pp. 49, claim $700

South Carolina case. Earle's fee 12 % net 84.00

Thorndike, Israel

No. 136, schr. Alert, Oliver, pp. 40, claim $1,003.73

Contract S. & W. and Earle 25 %, ⅓ to E..... ..... 83.64

Willock, Thomas

No. 1584, brig Eliza Wright, Ethridge, pp. 43, claim $138.74

Contract 25 % Earle..... 34.69

Wells, Arnold, Jr.

No. 4665, schr. Alert, Oliver, pp. 40, claim	$400	
" 3443, ship Betsy, Obear, " 41, "	396	
" 3017, brig Friendship, Hodges, 44, claim.....	300	
	$1096	
Contract S. & W. and Earle 25 %, ⅓ to Earle.....		91.00

Wells, John

No. 213, brig Vulture, Berry, pp. 40, claim	500	
" 3505, " Endeavor, Freeman, pp. 48, claim.....	300	
	$800	
Contract S. & W. & E. 25 %, ⅓ to Earle		66.66
		$32,431.41

186 *Fees Collected under Act of March 3rd, 1891.*

Allman, Harrison

No. 1991, schr. Bertha, Lanier, pp. 41 claim $3,113.33

Contract 25 % "Earle"..... ..... $778.33

Amory, Thomas

No. 3648, brig Sally, Cruft, pp. 45, claim	300	
" 3498, ship Eliza, Odell, pp. 47 "	664	
	$964	
Contract 20 % "Earle"		192.80

Amory, Francis

No. 1576, ship Eliza, Odell, pp. 47 claim *claim* $12,341.40

Contract Shellabarger & Wilson and Earle 20 % ⅖ to Earle..... 987.31

Bond, Nathan

No. 498, ship Eliza, Odell, pp. 48, claim $83.00

Contract Shellabarger & Wilson and Earle, 22½ % "Earle" ⅓ 6.24

Boarman, W. H.

No. 3654, ship Speculator, pp. 45, claim $400
" 3498, " Eliza " 48, " 166

$566

Contract Shellabarger and Wilson and Earle 25 % ⅓ to "Earle" 47.17

$2,011.85

187 Brought forward $2,011.85

Bussey, Benj.

No. 3498, ship Eliza, Odell, pp. 48, claim $332

Contract Shellabarger & Wilson and Earle 25 % ⅓ to "Earle" 27.66

Baltimore Insurance Company

No. 1695, brig Mary, Boyle, pp. 48 claim $11,000
" 1781 schr. Emily W. Emerson, p. 50 " 12,860

$23,860

Contract under agreement with Balto. att'ys Earle to have ½ of fee of 25 % Earle to pay S. & W., out of his ½ of fee 5 % on gross am't, of claim. "Earle" fee $2,982.50
Paid S. & W. 5 % on $23,860 ..... 1,193.

Net fee to Earle 1,789.50

Brown, Moses

No. 3498 ship Eliza, Odell pp. 48, claim $66.40

Contract Shellabarger & Wilson and Earle 25 % ⅓ to Earle 5.54

Brooks, Peter C.

No.	258,	scr.	Industry	Hawkes	pp.	39	claim.		$3000	
"	249	"	Delight,	Curtis	"	39	"		4000	
"	207	brig	Fortune,	Tuck	"	40	"		2000	
"	345	"	Mary,	J. Choot	"	41	"		500	
"	"	"	"	"	"	"	"	"	500	
"	"	"	"	"	"	"	"	"	500	
"	"	"	"	"	"	"	"	"	500	
"	"	"	"	"	"	"	"	"	500	
"	"	"	"	"	"	"	"	"	500	
No.	193,	schr.	Neutralety,	Gray	"	"	"		600	
"	"	"	"	"	"	"	"	"	600	
"	421	brig	Marcus,	Miles	"	42	"		1201	
"	260	schr.	Phœnix,	Bobson	"	"	"		2500	
"	497	brig	Mary,	Ross	"	"	"		5460	
"	931	"	Sally,	Cruft	"	45	"		9900	
"	241 & 233,	slp.	Farmer,	Freeman	pp.	45	claim.....	.....	1850	
"	896	slp.	Speculator,	Billings	45	claim			867.50	
"	518,	schr.	Elizabeth,	Trott	pp.	46	"		1600	
"	783	brig	Ruby,	Bartlett	"	47	"		2000	
"	964	ship	Eliza,	Odell	"	"	"		2739	
"	893	brig,	Gen. Wayne,	Allen	pp.	50	"		3456.40	
									44773.90	
Less returned to S. W. Pomeroy est.....									700.	
									44073 90	
Contract Shellabarger & Wilson and Earle 15 % ⅔ to Earle.....										4,407.39
										$8,241.94
188	Brought forward.....									$8,241.94

Carrie James

No. 841, ship Triumph, pp. 43, claim $2300

Contract under Balto. agreement, fee 33⅓ % ½ to Earle	$383.33	
Less 5 % on $2300 to S. & W.....	115.00	
Net fee to Earle.....		268.33

Carere, John

No.	1536,	brig	Mary,	Boyle,	pp.	48,	claim...	$2207
"	951,	schr.	Eutaw,	Smith	"	49,	"	1344.50
								$3551.50

Contract under Balto. agreement 33⅓ %, ½ to Earle	$591.91	
Less 5 % to S. & W. on $3551.50	177.57	
Net fee to Earle		414.35
Corcoran, W. W.		
No. 2628, brig Virginia, Butts, pp. 49, claim $79.09		
Contract 25 %	$19.77	19.77
Less 9⅜ % to J. M. Johnston, att'y	7.42	
Net fee to Earle		12.35
Codman, John		
No. 3498, ship Eliza, Odell, pp. 47, claim $166		
Contract S. & W. and Earle, 25 % ½ to Earle		13.84
Duncan, William		
No. 846, schr. Lucretia, Grant, pp. 50, claim $10,407.27		
Contract with Balto. agreement 33⅓ %, ½ to Earle	$1734.54	
Less 5 % on $10,407.27 to S. & W	520.36	
Net fee to Earle		1,214.18
		$10,164.99
189 Brought forward		$10,164.99
Dunlop, John		
No. 3162, brig Hope, Tappan, pp. 44, claim $1856.74		
Contract 5 %		92.84
Fellowes, Nathaniel		
No. 258, schr. Industry, Hawkes, pp. 39 claim	$1000	
" 165, ship, Accepted, Mason, pp. 40 claim	700	
" 207, brig, Fortune, Tuck, pp. 41 claim	1000	
" 345, " Mary, Choot, " 41 "	500	
" 193, schr. Neutrality, Gray, " 42 "	600	
" 421, brig, Marcus, Miles. " " "	210	
" 260, schr. Phœnix, Babson, pp. 42 claim	2000	
" 931, brig, Sally, Cruft, pp. 45 claim	3000	
896–3654, ship, Speculator, Billings, pp. 45 claim	1433.75	

No. 783, brig, Ruby, Bartlett, pp. 47 claim..	1000	
" 964, ship, Eliza, Odell, " " " ..	664	
" 893, brig, Gen. Wayne, Allen pp. 50 claim.....	1018.80	
	$13,126.55	
Contract 25%	$3,281.63	
Less rebate of ⅓ of 25% to Williamson.....	1,093.87	
Net fee to Earle		2,187.76
Greene, David		
No. 3547, brig Sally, Cruft, pp. 45, claim..	$500	
" 2707, slp. Farmer, Freeman, pp. 45, claim.....	3639	
" 3498, ship, Eliza, Odell, pp. 48, claim..	166	
	$4304	
Contract S. & W. and Earle 25% less rebate of 2½%, ⅓ to Earle		322.80
Gilman, Nicholas		
No. 3498, ship Eliza, Odell, pp. 47, claim $332		
Contract Earle & Stevens, 23⅓ to Earle ⅔.....		30.99
Hilton, Joshua,		
No. 2734, ship Accepted, Mason, pp. 40 claim $8,017		
Contract 25% Earle.....		2,004.25
Hollingsworth, Samuel		
No. 155 sch. Little Peg. Auld, pp. 39, claim $5960.50		
		$14,803.63
190 Brought forward.....		$14,803.63
No. 145, schr. Two Brothers, Fry, pp. 40, claim	$2384.57	
" 146, " Nancy, Black, pp. 40, claim	1969.12	
	$10,314.19	
Contract Balto. agreement 25%, ½ to Earle	$1,289.27	
Less 5% on $10,314.19 to S. & W.....	515.70	
Net fee to Earle.....		773.57
Huntington, Jabez		
No. 980, schr. Elizabeth, Trott, pp. 45, claim $3,583.09		
Contract 25% Earle.....		895.77

Holbrook, Edward,

No. 505 schr. Delight, Curtis, pp. 39, claim $6,302

Contract S. & W. and Earle 25%, ⅓ to Earle.....

Jones, John C.

No. 177 & 207 brig Fortune, Tuck, pp. 40, claim.....	$1500	
" 165 ship Accepted, Mason, Delano, pp. 40, claim.....	640	
" 345 brig Mary, Choot, pp. 41, claim	500	
" 260 schr. Phœnix, Bobson, pp. 42 ...	1000	
" 931 brig Sally, Cruft, pp. 45	500	
" 893 " Gen. Wayne, Allen, pp. 50..	509.40	
	$4649.40	
Contract S. & W. and Earle 25% ⅓ to Earle		387.45

Contract calls for only 15% cases arising in Brooks' office, and 50% cases arising in Taylor's office; all of the cases appropriated for were in Brooks' office, why this fee don't know.

		$17,385.59
191 Brought forward.....		$17,385.59

Mactier, Alexander

No. 444 ship Triumph, McConnell, pp. 43 claim $2300

Contract, Balto. agreement, 25 %, ½ to Earle..	$287.50	
5 % on $2300 to S. & W.....	115.	
Net fee to Earle.....		172.50

Mackay, William

No. 345, brig Mary, Choot, pp. 41 claim $500

Contract, S. & W. and Earle 25 %, ⅓ to Earle.....		41.67

Ownings, Nicolas,

No. 348, brig Two Sisters, Hubbert, pp. 48 claim.....	$5638.25	
" 1579, schr. Sisters, Bradish, pp. 49 claim..	682.50	
	$6320.75	
Contract, "Balto." "agreement" fee 33⅓ %, ⅓ to Earle.....	$1,053.45	
5 % on 6320.75 to S. & W.....	316.03	
Net fee to Earle.....		737.42

Owning, Beale

No. 2072, schr. Emily, Emerson, pp. 50 claim $3822.12

Contract, Balto. agreement fee 33⅓ %, ⅓ to Earle	$637.02	
5 % to S. & W. on $3822.12	101.10	
Net fee to Earle		445.92

Prince, James

No. 260, schr. Phœnix, Babson, pp. 42 claim $500

Contract, S. & W. and Earle, 25 %, ⅓ to Earle		41.67
		$18,824.77
192 Brought forward		$18,824.77

Pomeroy, S. W.

No. 3654, ship Speculator, Billings, pp. 45, claim	$600	
No. 3498, ship Eliza, Odell, pp. 48, claim	166	
	$766	
Add the $700 taken from Peter C. Brooks' brig Sally, Cruft claim	700	
	1466	
Contract, S. & W. and Earle, 25% ⅓ to Earle		122.16

Riggs, Geo. W.

No. 2628, brig Virginia, Butts, pp. 49, claim $79.09

Contract 25 %, less rebate to J. M. Johnston, att'y of 9⅓ % Net fee to Earle		12.36

Robb, William

No. 2073, schr. Hero, Hammett, pp. 49, claim $8475

Contract, Balto. agreement fee 33⅓ %, ⅓ to Earle	$1412.50	
5 % on $475 to S. & W.	423.75	
Net fee to Earle		988.75

Resspass, William

No. 570, schr. Nancy, Black, pp. 40, claim $2,210

Contract 25 %, Earle		552.50

Stewart, Thomas

No. 142, ship Theresa, Brown, pp. 39, claim $6,358

Contract, 25%, Earle		1,587.50

Smith, Richard,

No. 2628, brig Virginia, Butts, pp. 49, claim $79.09

Contract 25 % rebate to J. M. Johnston, att'y 9¾ % Earle's net fee 12.36

$22,100.40

193 Brought forward $22,100.40

Sands, Comfort,

No. 161, ship Light Horse, Hoff, pp. 47. claim $7318.66

Contract calls for 25% but a rebate of 7% to Edward T. Bayles Contract 18%, Earle net..... 1,317.35

Stanwood, Wm.

No. 3162 brig Hope, Toppan. pp. 44, claim $2785.11

Contract 25% ⅕ of fee to go to Baker, Baker & Cornish, Net fee of Earle 557.02

Smith, Francis

No. 1091, schr. Bertha, Lanier, p. 41, claim $6233.33

Contract 25%, Earle 1,558.33

Smith, William

No. 3654, ship Speculator, Billings, pp. 45, claim $1000

Contract S. & W. and Earle, 25%, ⅓ to Earle..... 83.34

Toppan, Richard

No. 3162 brig Hope, Tappan, pp. 44, claim $4654.11

Contract 5%, Earle..... 232.70

Tenant, Thomas

No. 571, sloop Cicero, Taggart, pp. 50, claim $8953.18

Contract, Baltimore agreement, fee 25%, ⅕ to Earle $1119.14

5% to S. & W. on $8953.18..... 447.65

Net fee to Earle..... 671.49

$26,520.63

194 Brought forward..... $26,520.63

Thorndike, Israel

No. 3498, ship Eliza, Odell, pp. 47, claim $83

Contract S. & W. and Earle, 25% ⅓ to Earle..... 8.30

Veitch, Richard

No. 779, brig Virginia, Butts, pp. 49, claim $19,762

Contract, 25%, Earle..... 4940.50

Wood, Abner

No. 976, brig Ruby, Bartlett, pp. 47 claim $2150.79

Contract S. & W. and Earle, 25%, ⅛ to E..... 179.24

Willock, Thomas

No. 3859, schr. Bertha, Lanier, pp. 41, claim $6233.33

Contract 25% with rebate of ⅔ to W. H. Burroughs, att'y. Net to ⅔..... 935.00

Wood, Gabriel

No. 1495, ship Hope, Rodgers, pp. 41, claim $19,776

Contract, Balto. agreement fee 33⅓, Earle ½ $3,296

5% on 19,776 to S. & W..... 988.80

Net to Earle..... 2,307.20

Wells, Arnold, Jr.

No. 3498, ship Eliza, Odell, pp. 48, claims $116.20

Contract S. & W. and E. 25%, ⅛ to E..... 9.68

Wells, John

No. 3498, ship Eliza, Odell, pp. 48, claim $166

Contract S. & W. and E., ⅛ of 25% to E..... 13.84

$34,914.39

195 Brought forward..... $34,914.39

Watson, Marstan

No. 132, schr. Industry, Hawkes, pp. 39, claim..... $6,555.

No. 129 schr. Phœnix, Babson, pp. 42 claims. 10,846.57

" 3498 ship Eliza, Odell, pp. " 48 " 332.

$17,733.57

Contract S. & W. and Earle fee 20%, ⅛ to E..... 1,182.24

Yellott, Jeremiah

No. 338, schr. James, Gunnill, pp. 41, claim.. $7176.34

" 348, brig Two Sisters, Hubbard, 48 " .. 5638.25

$12814.59

Contract, Balto. agreement fee 33⅓%, ½ to Earle	$2135.76	
5% to S. & W. on $12,814.59	640.72	
Net fee to Earle		1,495.04
Wells, Arnold		
No. 3498, ship Eliza, Odell, pp. 48 claim $332		
Contract S. & W. & E. 25 %, ⅓ to E.		27.60
Hatch, Cromwell		
Geo. A. Boutwell & George A. King of Boston, Mass. att'ys for claimant. Earle rec'd from said attorneys 1/5 of fee of $2173.71		434.74
Cobb, Matthew		
Boutwell & King's case, att'ys paid Earle as fee for his services		218.09
Brooks office underwriters,		
Boutwell & King, att'ys. Cases paid Earle		132.03
		$38,404.13
196 Am't brought forward		$38,404.13
Taylor office underwriters		
Boutwell & King att'ys. Cases paid Earle		341.50
Total		$38,745.63

197 *Account of Expenses French Spoliation.*

Filed Nov. 13, 1902.

To office expenses Feb. 9, 1884 to July 15, 1893	$22,310.22
To amount paid Omar D. Conger & Son, att'y- at law	2,000.00
To amount paid Phil. B. Thompson, att'y at law	2,500.00
To amount paid Walter S. Hutchins	5,200.00
To amount paid Frank P. Morgan	150.00
To amount paid H. W. Worthington, att'y at law	200.00
To amount paid William McAdoo, att'y at law	100.00
To amount paid H. D. Money, att'y at law	1,000.00
To amount paid Robert B. Bradford	3,608.05
To amount paid Wm. T. S. Curtis	6,150.00
To amount paid T. J. Pickett	10,400.00
To expenses July 15, 1893 to Sept. 1, 1894, (Wm. E. Earle died Aug. 13, 1894)	875.00

To expenses Sept. 1, 1894, to Nov. 24, 1894, (date of contract between Curtis, Pickett & Earle)	570.00
To expenses Nov. 24, 1894, to Nov. 1, 1900	548.39
To amount paid Dudley & Michener, att's at law	2,000.00
To amount paid C. R. Shelly	1,000.00
To amount paid L. B. Clarke	700.00
To cost suit *vs.* Clarke *et al*	2,133.80
Total	$61,455.46

198 *General Expense Spoliation.*

1884–'5.

				Voucher.
1884.				
Feb'y	9.	H. I. Rothrock, circulars	$4.75	1
1885.				
Jan'y	31.	McGill & Co., circulars	4.75	2
Feb'y	28.	J. J. Deceker & Co	2.50	3
		C. Schneider, opening chests	.75	4
M'ch	3.	McGill & Co., spo. printing	12.00	5
	20.	Rob't I. Fleming, cases	122.38	6
		Balto. Ass'n, ½ Barney retainer	50.00	7
		R. L. Miller, spo. letters	34.40	8
	31.	McGill & Co., agreements	3.50	9
Apr.	1.	G. J. Nash, binding spo. books	5.00	10
	6.	Rob't I. Fleming, cases	32.68	11
	11.	Geo. L. Brock, stengh.	4.00	12
	25.	G. J. Nash, binding spo. books	12.25	13
May	1.	S. J. Haislett, spo. rooms	10.00	14
	8.	R. L. Miller	14.22	15
	25.	Deceker & Co	18.60	16
		M. W. Beveridge	4.20	17
		Lycett's bookbindery	13.75	18
June	2.	Mason N. Richardson	46.50	19
	1.	Times, Democrat	1.80	20
	15.	R. L. Miller	17.58	21
		News & Courier	5.70	22
	22.	John F. Paret	1.25	23
		H. W. Upperman	8.50	24
	24.	E. Morrison	.40	25
	30.	J. C. Parsons, tel	.35	26
July	3.	W. H. Morrison	7.15	27
	8.	Baltimore Sun	3.75	28
	10.	W. H. Upperman	5.50	29
		R. L. Miller	29.52	30
	11.	Public Ledger	3.60	31
		Carried forward	$481.33	

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1885.				Voucher.
		Brought forward	$481.33	
July	15.	Mason N. Richardson	20.50	32
	22.	Decker & Co	14.60	33
		Lycett bookbindery	6.10	34
	31.	Thomas McGill & Co	84.75	35
Aug.	1.	Ice bill, ⅔ of $1.35	.90	36
	1.	John Randolph	16.00	37
	1.	Albert Upshur	3.00	38
	5.	H. I. Rothrock	1.75	39
	7.	Lycett bookbindery spo. books	3.30	40
		John Randolph	6.00	41
	11.	Byron S. Adams	6.30	42
	12.	J. H. Soule	4.50	43
	15.	R. L. Miller	38.20	44
	17.	H. W. Upperman	6.25	45
	18.	Providence Journal	1.50	46
	28.	H. W. Upperman	13.10	47
Sep.	1.	Ice bill, ⅔ of $1.30	.87	48
		James Anglin	6.00	49
		J. D. Milans	59.8[illegible]	50
	4.	H. W. Upperman	24.0[illegible]	51
	12.	H. W. Upperman	23.65	52
	19.	H. W. Upperman	14.25	53
	23.	H. W. Upperman	13.50	54
	30.	Mason N. Richardson	19.00	55
		Decker & Co	12.90	56
		Sundries for August, '85	16.63	57
		Sundries for September, '85	19.01	58
	8.	H. W. Upperman, engrossing	24.00	59
Oct.	1.	Rent, Sept. '85 3/2 $45	30.33	60
		Rent, Aug. '85 ⅔ $45.00	30.00	61
	2.	Rhodes & Simms, case	46.00	63
	1.	Robert L. Miller	27.00	64
		Carried forward	$1075.03	

200

		Brought forward	$1075.03	
Oct.	3.	H. W. Upperman	9.50	64
	7.	H. W. Upperman	7.25	65
	10.	H. W. Upperman	7.00	66
	17.	H. W. Upperman	7.75	67
		H. L. Thomas, translations	12.94	68
	24.	H. W. Upperman	7.50	69
	28.	John Randolphe, St. of Cl'ms	6.00	70
	31.	H. W. Upperman	9.00	71
		Decker & Co	7.00	72

				Voucher.
1885.				
Oct.	31.	Thomas McGill & Co	$20.40	73
		Sundries for October, '85	20.45	74
Nov.	1.	Rent, October '85, ⅔ $45.00	30.00	75
		John F. Paret	5.50	76
	2.	Rob't L. Miller	27.40	77
	4.	Providence Journal	1.50	78
	5.	Lycett's bookbindery	4.00	79
	4.	Boyd's Directory, "Cansten agency"	1.00	80
	14.	H. W. Upperman	1.00	81
	21.	H. W. Upperman	2.50	82
	24.	Mason N. Richardson	14.00	83
	28.	H. W. Upperman	.50	84
	30.	H. I. Rothrock	3.00	85
		Thomas McGill & Co	28.35	86
		Decker & Co	6.10	87
		Sundries, November '85	17.00	88
Dec.	1.	Rent, November, '85 ⅔ $46.00	30.67	89
		R. L. Miller	12.60	90
		Ice bill, ⅔ of $3.85	2.57	91
	5.	H. W. Upperman	6.00	92
	6.	E. M. Parkman	1.05	93
	12.	H. W. Upperman	3.00	94
	17.	H. L. Thomas	3.65	95
		Carried forward	$1391.31	
201				
		Brought forward	$1391.31	
Dec.	24.	Mason N. Richardson	7.00	96
		H. F. Wallace	16.00	97
	28.	Morning News	1.50	98
	30.	Rob't L. Miller	14.10	99
	31.	Thomas McGill & Co	47.00	100
		Sundries, December, 1885	11.85	101
		Rent, ⅔ of $315	210.00	102
1886.				
Jan.	1.	Ice bill ⅔ of $1.30	.87	103
	6.	Lycett bookbindery	.50	104
	9.	W. H. Morrison	19.26	105
		Herbert F. Wallace	12.00	106
	15.	Henry L. Thomas	4.60	107
	27.	Ianis N. Palmer	700.00	108
	30.	Deceker & Co	9.60	109
		Herbert F. Wallace	18.00	110
		Henry Larroque	5.00	111
	16.	Thomas McGill & Co	47.00	112
	30.	Sundries, January, '86	15.66	113
		Rent for January, '86	30.00	114

1886.				Voucher.
Feb.	1.	Janitor ⅔ of $3.00	$2.00	115
		Robert L. Miller	30.40	116
	3.	H. I. Rothrock	3.00	117
	6.	H. L. Thomas	3.50	118
		H. W. Upperman	7.75	119
	8.	H. F. Wallace	5.00	120
	13.	H. W. Upperman	20.50	121
	19.	H. F. Wallace	3.50	122
	20.	John F. Paret	14.25	123
		H. W. Upperman	10.25	124
	22.	R. W. Smith	1.25	125
	26.	James M. Johnson	14.75	126
202		Carried forward	$2677.42	
		Brought forward	$2677.42	
Feb'y	27.	H. W. Upperman	8.75	127
	28.	Rob't L. Miller	27.20	128
		Sundries for Feb'y, '86	16.55	129
		Rent, February, '86	30.00	130
M'ch	1.	C. B. Thompson	3.50	131
	11.	Joseph Keyworth	20.00	132
	1.	Janitor ⅔ of $3.00 Feb'y	2.00	133
	10.	Henry L. Thomas	9.00	134
	13.	Thos. McGill & Co.	13.00	135
		H. W. Upperman	9.50	136
	18.	Mrs. Curtis	10.00	137
	21.	Richmond Dispatch	1.50	138
	27.	C. B. Thompson	3.05	139
	31.	Decker & Co.	15.35	140
		Thomas McGill & Co.	4.00	141
		Rent for March, 1886	30.00	142
		Sundries, March, '86	10.15	143
		Janitor, ⅔ of $3. March	2.00	144
Apr.	1.	Rob't L. Miller	27.60	145
		C. B. Thompson	2.50	146
	5.	Hartford Courant	1.50	147
	12.	Joseph Keyworth	20.00	148
	20.	Rob't L. Miller	12.24	149
	24.	Typewriter	100.00	150
		Mortimer A. A. Downing	30.00	151
	30.	Sundries for April, '86	21.63	152
		Rent for April, '86 ⅔	30.00	153
May	1.	J. J. Decker	42.55	154
		Ice bill ⅔ of $5.15	3.44	155
	4.	E. Morrison	.25	156
	8.	C. B. Thompson	4.70	157
	12.	Retainer paid Clark and Stewart	200.00	158
		Carried forward	$3389.43	

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1886.			Voucher.
	Brought forward	$3389.43	
May	17. Mrs. Curtis, engrossing	23.50	159
	18. National Republican	12.00	160
	22. Lycett bookbindery	5.00	161
	25. Rob't L. Miller	1.56	162
	96. Mortimer A. Downing, clerk	60.00	163
	27. Edmund Kelly, Paris	150.00	164
	31. Sundries for May, '86	6.78	165
	Rent for May, '86, ⅔ of $48.25	32.17	166
June	16. Expenses to Boston	50.55	167
	16. Mrs. Curtis, engrossing	7.00	168
	30. Mortimer A. Downing, clerk	60.00	169
	Sundries for June, '86	10.80	170
	Rent for June, '86, ⅔ of $45.00	30.00	171
July	1. Ice, ⅔ of $2.60	1.74	172
	1. J. D. Milans, printing	1140.52	173
	13. Mrs. Curtis, engrossing	5.00	174
	14. Mortimer A. Downing, clerk	30.00	175
	27. Wm. Woodville, Jr., copying	15.50	176
	29. Winslow Warren, comsr	240.00	177
	31. J. J. Decker	14.45	178
	Janitor, ⅔ of $3.00 July, '86	2.00	179
	Sundries, July, '86	38.66	180
	Rent for July, 86, ⅔ of $45.00	30.00	181
Aug.	3. Mortimer A. Downing, clerk	30.00	182
	6. A. Hopkins, clerk, St. of Cl'ms	693.00	183
	14. Mortimer A. Downing	30.00	184
	31. Sundries for Aug., '86	22.12	185
	Janitor for Aug., 86, ⅔ of $3	2.00	186
	Ice for Aug., 86, ⅔ of $1.30	.87	187
	John F. Paret	5.50	188
	Rent for August, '86, $40.00	40.00	189
Sept.	1. J. J. Decker	9.75	190
	Carried forward	$6189.90	

204

	Brought forward	$6189.90	
Sept.	2. Mortimer A. Downing	39.00	191
	11. Department of State, records	11.15	192
	12. Mortimer A. Downing	30.00	193
	21. John Randolph, Ct. Claims	60.00	194
	Deprt. of State, foreign rec	43.00	195
	30. Janitor for Sept. '86	2.00	196
	Rent for Sept. '86, spo. rooms	40.00	197
	Sundries, Sept. '86	8.47	198

				Voucher.
1886.				
Oct.	6.	J. D. Milans	$380.42	199
		Mortimer A. Downing, clerk	60.00	200
	7.	J. J. Decker	12.50	201
	8.	S. B. Taylor, bailiff	19.00	202
	11.	E. W. Woodruff	12.60	203
		John Randolph, Ct. Cl'ms	40.00	204
	12.	Dept. of State, record Minerva	39.55	205
	14.	Dept. of State, " London packet	51.04	206
		J. I. Joyce, Italian	21.60	207
	16.	H. L. Thomas	10.68	208
		H. L. Thomas	14.41	209
	28.	Rob't U. Fleming	7.24	210
	29.	Clerk U. S. Ct. Richmond Covan	30.00	211
	31.	Janitor for October '86	2.00	212
		Rent for October '86	40.00	213
		Sundries October '86	46.55	214
Nov.	6.	Mortimer A. Downing	30.00	215
	13.	John Randolph Ct. of Claims	48.00	216
	19.	Thos. McGill & Co	17.60	217
	30.	J. W. Blankford	30.00	218
		H. K. Willard, rent for Nov. '86	40.00	219
		Janitor for Nov. '86 ⅔ of $3.00	2.00	220
		Sundries for November, 1886	10.01	221
Dec.	1.	Mortimer A. Downing	60.00	222
205		Carried forward	$7443.72	
1886–'7.		Brought forward	$7443.72	
Dec.	1.	Ice Sept. Oct., Nov	2.57	223
		J. J. Decker	17.90	224
	3.	Dept. of State, "Lydia"	144.46	225
	4.	A. Hopkins, cl'k Ct. Cl'ms	130.00	226
	9.	J. Randolph, ass't cl'k do	48.00	227
	11.	Miss Voulte	4.20	228
	13.	J. D. Milans	363.70	229
	18.	Miss Voulte	10.35	230
	23.	Miss Voute	6.00	231
		Mrs. Curtis, engrossing	18.00	232
	24.	H. L. Thomas	1.65	233
	28.	W. F. Reamer	6.50	234
	29.	J. J. Decker	20.25	235
	31.	Janitor, ⅔ of $3.00	2.00	236
		Sundries, December, '86	17.16	237
		Rent, Nov. & Dec., '86	80.00	238
	15.	Mortimer A. Downing	30.00	239
	25.	Mortimer A. Downing	30.00	240

				Vouchers.
1887.				
Jan.	4.	Mortimer A. Downing	$20.00	241
		John C. Parker	6.25	242
	12.	Dept. of State	41.46	243
	12.	J. D. Milans	204.32	244
	13.	A. B. Voute	.75	245
	17.	L. D. Lowry, Jr.	30.00	246
	19.	A. B. Voute	1.50	247
	21.	W. H. Morrison	13.00	248
	19.	Mortimer A. Downing	10.00	249
	21.	Mrs. Curtiss, engrossing	10.00	250
		Thomas McGill & Co	4.00	251
		E. W. Woodruff	5.40	252
	31.	J. J. Decker	10.15	253
		Carried forward	$8733.29	
206				
		Brought forward	$8733.29	
Jan.	31.	Thomas McGill & Co	5.50	254
		Sundries for Jan'y '87	32.48	255
Feb'y	1.	Rent for January, '87	60.00	256
		Janitor, Jan'y ⅔ of $3.00	2.00	257
		Ice, Dec. '86 and Jan'y '87	1.77	258
		L. D. Lowry, Jr.	16.00	259
	2.	Miss Voute	1.15	260
	4.	J. J. Decker	16.15	261
		Miss Wallace	18.76	262
		Thos. McGill & Co	8.80	263
	7.	Miss Voute	.90	264
		Miss Thompson	7.00	265
	14.	Mortimer A. Downing, clerk	60.00	266
	16.	Archibald Hopkins, Ct. Claims	78.00	267
	17.	Washington Post	25.00	268
		James G. Thompson, "Capital"	15.00	269
	19.	Miss Voute	.60	270
	21.	W. F. Stockett & Co.	3.00	271
		Jas. G. Thompson, "Capital"	45.00	272
	28.	J. J. Decker	4.50	273
		Sundries for February, '87	4.78	274
Mar.	1.	Rent for February, '87	40.00	275
		Ice for February, ⅔ of $1.20	.80	276
		Janitor for February, '87	2.00	277
	4.	Miss Wallace	2.60	278
	5.	H. R. Berlin	25.50	279
	19.	Miss Voute	2.95	280
	25.	Miss Voute	1.15	281
		B. R. Berlin	10.37	282
	31.	Miss Wallace	6.00	283

1887.				Vouchers.
Mar.	31.	J. J. Decker	$9.80	284
		Sundries for March, '87	6.05	285
		Carried forward	$9246.90	
207				
		Brought forward	$9246.90	
Apr-l	1.	Rent for March '87	40.00	286
		Janitor for March	2.00	287
	21.	B. R. Berlin	11.95	288
	30.	Miss Wallace	3.75	289
		Sundries for April, '87	8.45	290
	16.	J. J. Decker	15.15	291
May	1.	Janitor for April '87 ⅔ of $3.00	2.00	292
	2.	J. D. Milans	513.41	293
	25.	Miss Wallace	4.60	294
	31.	Sundries for May	5.83	295
June	1.	Janitor for May, '87, ⅔ of $3.00	2.00	296
		J. D. Milans	1179.97	297
		J. J. Decker	3.20	298
		J. W. Blandford	10.00	299
	24.	George Mayer	3.00	300
	30.	J. J. Decker	5.25	301
		Sundries for June '87	5.18	302
July	1.	Rent for April and May '87	80.00	303
		Janitor for June '87 ⅔ of $3.00	2.00	304
	5.	W. H. Morrison	9.00	305
		Hartford Courant	1.00	306
	14.	Innis N. Palmer	1300.00	307
	30.	J. J. Decker	2.45	308
	25.	George Mayer	6.80	309
	16.	J. D. Milans, Blount brief	42.50	310
Aug.	1.	Ice bill March to date, $6.55 ⅔	4.37	311
		Sundries for July, '87	11.55	312
		Janitor for July, '87	2.00	313
		Rent for June and July, '87	80.00	314
		Miss Wallace	4.22	315
	12.	J. Walter Blandford	12.00	316
	31.	Sundries Aug. '87	9.63	317
		Carried forward	$12630.16	
208				
		Brought forward	$12630.16	
Sept.	1.	Janitor for Aug., '87	2.00	318
		Rent Aug. '87	35.00	319
	2.	Ice for August	.90	320
	14.	Risden & Keefe	5.50	321
	22.	Reisden & Keefe	5.00	322

				Vouchers.
1887.				
Sept.	27.	J. D. Milans	$257.23	323
	30.	Miss Crockett	1.62	324
		J. J. Decker	4.13	325
		Sundries for September, 1887	9.30	326
		Janitor September 1887	2.00	327
Oct.	5.	John Randolph, St. of Claims	12.00	328
	8.	Risden & Keefe	6.10	329
	15.	Risden & Keefe	9.60	330
	21.	Express	.30	331
	22.	Miss Crockett	5.79	332
	31.	Sundries October 1887	2.28	333
Nov.	1.	Janitor October 1887	2.00	334
		J. J. Decker	10.63	335
		Express	.70	336
		Express	.60	337
	14.	Miss Crockett	.20	338
	30.	J. J. Decker	2.50	339
		Sundries, November 1887	31.10	340
Dec.	3.	Janitor for November 1887	2.00	341
		F. Vandyke	1.24	342
		F. Vandyle	2.40	343
	20.	A. Bayley Blandford, Paris "Hebe"	23.02	344
	21.	A. Hopkins	12.00	345
	24.	Lawrence Lewis	25.00	346
	31.	J. Walter Blandford	30.00	347
		Rent, Sep. Oct. Nov. Dec., 1887 $35.00	140.00	348
		Sundries for December, 1887	17.56	349
209		Carried forward	$13289.88	
1888.				
Jan'y	1.	Brought forward	$13289.88	
	4.	"Capital"	15.00	350
	17.	Archibald Hopkins	10.00	351
Feb'y	1.	Janitor, January '83	2.00	352
	4.	J. J. Decker	9.25	353
	8.	J. C. Fracker	1.65	354
	11.	Post	17.00	355
	22.	A. A. Hoehling	2.00	356
	28.	Kate Fountain	61.09	357
	29.	Mary S. W. Day	6.85	358
		J. J. Decker	10.10	359
M'ch	1.	Janitor, February, '88	2.00	360
		A. A. Hoehling	2.00	361
		Ice	2.56	362
	16.	A. A. Hoehling	4.00	363
	21.	A. A. Hoehling	2.50	364

				Vouchers.
1888.				
M'ch	31.	Mary S. W. Day	$5.56	365
		A. A. Hoehling	7.75	366
Apr.	1.	Janitor, March, '88	2.00	367
	9.	A. A. Hoehling	1.50	368
M'ch	1.	A. A. Hoehling	4.00	369
		J. J. Decker	1.75	370
		J. J. Decker	12.85	371
		J. D. Milans	342.75	372
		Mrs. Day	4.80	373
		Archibald Hopkins	35.00	374
June	1.	Janitor, May '88, April	4.00	375
	11.	Mrs. Day	5.55	376
	26.	Express	.25	377
	28.	Express	.25	378
July	1.	Rent for June	35.00	379
	2.	MacQueen & Wallace	7.00	380
		Mrs. Day	13.48	381
210			$13921.37	
1888–'9.		Brought forward	$13921.37	
July	31st.	McQueen & Wallace	21.25	382
	28th.	Arthur Lord	5.25	383
		Rent Jan., Feb. M'ch, Apr., May, $35.45	175.00	384
Aug.	1.	Janitor June and July, '88	4.00	385
	11.	A. A. Hoehling	10.00	386
		John Day	12.22	387
	29.	Capital	30.50	888
	23.	John Randolph	5.00	389
Sept.	1.	Mrs. Day	11.99	390
	28.	George Mayer	1.40	391
	29.	Express	.25	392
		Rob Miller	12.80	393
		J. J. Decker	19.95	394
Oct.	1.	Lulu Wright	4.66	395
	11.	Francis C. Caller	12.35	396
	20.	A. A. Hoehling	4.50	397
	29.	John Randolph	4.00	398
	31.	Janitor, Aug. Sept., Oct. '88	6.00	399
Nov.	1.	Lulu Wright	5.72	400
		M. E. Hale	3.50	401
	14.	Francis Valler	10.60	402
	16.	J. F. Brown	6.32	403
Dec.	1.	Mrs. Day	10.38	404
	4.	Linney Miller	6.75	405
	11.	George Mayer	1.00	406

				Vouchers.
1888–'9.				
Dec.	12.	Liney N. Miller	$13.20	407
	18.	E. D. Seccomb	11.84	408
Dec.	31.	Janitor, Nov. and Dec., '88	4.00	409
		Rent July, Aug., Sept., Oct., Nov., Dec., at $35.00	210.00	410
1889.				
Jan.	16.	Mrs. Day	12.50	411
	28.	F. S. Fiske	4.17	412
211			$14562.47	
1889–'90.		Brought forward	$14562.47	
Jan'y	13.	J. J. Decker	10.03	413
	13.	Janitor January 1889	2.00	414
Feb.	1.	Mrs. Day	13.54	415
	28.	Janitor, February 1889	2.00	416
Mar.	1.	Public Printer	20.85	417
		Mrs. Day	13.60	418
	2.	R. C. Jones	2.26	419
Apr.	3.	Mrs. Day	3.82	420
	9.	Archibald Hopkins	10.00	421
	11.	J. D. Milans	172.35	422
	29.	Janitor, March and April '89	4.00	423
May	1.	Mrs. Day	3.05	424
	14.	French legation	11.90	425
	31.	Janitor, May 1889	2.00	426
June	3.	Mrs. Day	1.28	427
	29.	Janitor, June 1889	2.00	428
July	31.	Janitor, 1889	2.00	429
Aug.	1.	Mrs. Day	1.40	430
	31.	Sundries, Aug. & Sept. 1889	24.18	431
Sept.	30.	Janitor, Aug. & Sept., 1889	4.00	432
	31.	Janitor, October, 1889	2.00	433
Nov.	30.	J. J. Decker	12.65	434
		Mrs. Day	4.88	435
		Janitor, November 1889	2.00	436
Dec.	28.	J. J. Decker	3.00	437
	30.	Janitor, December, 1889	2.00	438
	30.	Rent for year 1889 at $35. 12 mos	420.00	439
1890.				
Jan'y	15.	J. D. Milans	55.00	440
	21.	George M. Bond	4.00	441
	30.	Mrs. Day	7.60	442
	30.	McQueen & Wallace	4.00	443
		Carried forward	$15385.86	

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				Vouchers.
1890.				
		Brought forward	$15385.86	
Jan'y	31.	McQueen & Wallace	16.00	444
		Janitor, January, 1890	2.00	445
Feb.	5.	A. R. Hauckel	5.00	446
	13.	Telegrams	.80	447
	19.	Mrs. Day	7.49	448
	28.	Janitor, Feb'y 1890	2.00	449
		J. J. Decker	6.45	450
Mar.	1.	F. S. Doyle	2.50	451
	10.	Public Printer	7.15	452
	18.	H. L. McQueen	13.50	453
	31.	H. L. McQueen	4.00	454
		C. B. Thompson	1.60	455
Apr.	5.	H. L. McQueen	3.25	456
May	31.	Janitor, M'ch Apr. May, 1890, $3 & 3	6.00	457
June	28.	Mrs. Day	12.23	458
	30.	Janitor, June 1890	2.00	459
July	1.	Mrs. Day	8.56	460
	31.	J. J. Decker	3.00	461
Aug.	12.	Mrs. Day	2.40	462
	25.	Thos. J. Burne	14.28	463
	30.	Janitor, Aug. & July 1890	4.00	464
		F. S. Doyle	3.95	465
Sept.	18.	F. S. Doyle	4.00	466
	24.	Public Printer	10.35	467
	27.	Mrs. Day	6.12	468
	30.	Rent from Jan'y 1 to date at $35 x 9	315.00	469
Oct.	31.	F. S. Arnold	7.50	470
		Janitor	1.50	471
		Rent for October, 1890	15.00	472
Nov.	30.	F. S. Arnold	7.50	473
		Janitor	1.50	474
		Rent for November, 1890	15.00	475
213		Carried forward	$15897.49	
1890–'1.				
Dec.	1.	Brought forward	$15897.49	
	30.	F. S. Arnold	7.50	476
		Janitor	1.50	477
		Rent for December 1890	15.00	478
1891.				
Jan'y	31.	F. S. Arnold	7.50	479
		Janitor	.50	480
		Rent for January, 1891	15.00	481
		Sundries for January 1891	4.47	482

				Vouchers.
1891.				
Feb'y	28.	J. J. Decker	$15.75	483
		F. S. Arnold	7.50	484
		Sundries February 1891	13.30	485
		Rent February 1891	15.00	486
M'ch	10.	J. J. Decker	5.00	487
	31.	F. S. Arnold	10.00	488
		Sundries	45.05	489
		Rent for March, 1891	15.00	490
Apr.	1.	Mrs. Day	12.86	491
	2.	Mrs. Day	30.84	492
	3.	Rent for April, 1891	35.00	493
	4.	F. S. Presby	2.60	494
		Henry A. Clark & Son	1.45	495
	9.	Linotype Co. See No. 565	15.40	496
	30.	Notley Anderson	13.55	497
	30.	F. S. Arnold, April, 1891	20.00	498
		Sundries, April, 1891	21.23	499
May	1.	Rent for May, 1891	35.00	500
		Rob't Miller	5.50	501
		The Capitol	77.00	502
		The Capitol	135.00	503
	16.	Typewriter material	.75	504
		Notary bill, 18889 to date	39.00	505
	22.	Linotype Co., see No. 565	10.15	506
		Carried forward	$16530.89	
214				
		Carried forward	$16,530.89	
May	29.	Linotype Company	10.50	507
	26.	Waite & Green	11.35	508
	31.	F. S. Arnold	20.00	509
	31.	Sundries May, 1891	14.30	510
June	1.	W. H. Cooper	1.25	511
	3.	H. L. McQueen	6.00	512
	3.	Rent for June, 1891	35.00	513
		W. H. Cooper	13.65	514
	24.	E. Morrison	2.80	515
		H. A. Clark & Son	1.00	516
	30.	F. S. Arnold	20.00	517
		Sundries, June 1891	9.28	518
July	1.	W. H. Morrison	12.20	519
	2.	Rent for July, 1891	35.00	520
	9.	Col. Fisk, Boston, depositions	100.00	521
	18.	Notary, Chase depositions	.50	522
	29.	Repairs, to shelves, etc	1.25	523
	31.	Arnold for July, 1891	20.00	524
	25.	Miscellaneous items	1.50	525

				Vouchers.
1891.				
July	25.	Sundries for July, 1891	$4.54	526
Aug.	1.	J. J. Decker	9.95	527
		W. H. Cooper	13.80	528
	5.	C. T. Lovering	2317.00	529
	7.	D. W. Scribner	5.10	530
	8.	H. L. Thomas	3.50	531
	11.	Mitchell, deposition	4.50	532
	18.	Binding	2.40	533
	22.	M. Eugene Culver	20.25	534
	31.	F. S. Arnold	20.00	535
		Sundries August, 1891	9.25	536
		Rent for August, 1891	35.00	537
Sept.	1.	Miscellaneous	1.30	538
		Carried forward	$19293.06	
215				
Sept.	—.	*Carried* forward	$19293.06	
	2.	Miscellaneous	1.00	539
		Rent for September, 1891	35.00	540
	8.	Clerk St. Claims	3.00	541
	10.	S. A. Huntington	88.65	542
	14.	Typewriter	.20	543
		Typewriter	2.45	544
		E. Morrison	4.00	545
	16.	Rob't S. Cooker	6.50	546
		Gilman M. Fague	2.00	547
	22.	Typewriter	1.00	548
	23.	F. A. Baker, Sims dep	2.50	549
	24.	M. L. Ferrers	20.50	550
	26.	Expenses to New York	26.50	551
	30.	F. S. Arnold	20.00	552
		Sundries, Sept. 1891	42.90	553
Oct.	2.	Rent, Oct., 1891	35.00	554
	5.	Ct. of Claims	2.50	555
	9.	W. T. Curtiss, depositions	190.00	556
	17.	Court of Claims	10.00	557
	30.	F. S. Fiske, deposition	4.50	558
	31.	F. S. Arnold	20.00	559
		Sundries, October, 1891	8.00	560
Nov.	1.	W. H. Hooper	6.60	561
	2.	G. M. Fague	.50	562
	3.	Rent, November, 1891	35.00	563
	13.	Adams, Brackett, Veitch, case	3.59	564
		Linotype Co., see Nos. 496 and 506	190.82	565
	18.	Linotype Company	4.90	566
	21.	Jules Boenfre	5.00	567

				Vouchers.
1891.				
Nov.	29.	W. C. Williamson	$18.75	568
		F. S. Arnold, November, 1891	20.00	569
		Sundries, Nov., 1891	4.56	570
216		Carried forward	$20118.98	
1891-'2.		Brought forward	$20118.98	
Dec.	3.	Linotype Company	3.50	571
		Linotype Company	3.85	572
		Linotype Company	2.10	573
	5.	H. L. McQueen	10.00	574
	11.	Henry L. Thomas	9.00	575
	12.	Clerk at court, Alexandria, Va.	2.86	576
	31.	F. S. Arnold	25.00	577
		Sundries, December, 1891	13.22	578
		Rent, December, 1891	35.00	579
1892.				
Jan'y	15.	E. Morrison	4.20	580
	16.	Rob't S. Cooper	4.00	581
	21.	L. Bunker	8.00	582
	26.	Rent, January, 1892	35.00	583
	28.	H. L. McQueen	2.00	584
		H. L. McQueen	5.00	585
	29.	G. Rowzee	1.00	586
	31.	F. S. Arnold, January, 1892	25.00	587
		Sundries, January, 1892	9.04	588
Feb.	4.	Rent, February, 1892	35.00	598
	11.	Repairs, typewriter	8.00	590
	6.	Linotype Company	13.15	591
		Linotype Company	2.10	592
	13.	Chas. S. Knowles	8.00	593
		McGill and Wallace	10.60	595
	15.	McGill and Wallace	3.60	594
		McGill and Wallace	3.60	596
	17.	McGill and Wallace	5.40	597
		McGill and Wallace	3.60	598
		McGill and Wallace	3.60	599
	19.	McGill and Wallace	3.60	600
	20.	McGill and Wallace	7.20	601
		Carried forward	$20425.00	
217				
		Brought forward	$20,425.00	
Feb'y	25.	McGill & Wallace	3.60	602
		Register of wills	5.00	603
	29.	H. L. McQueen	4.75	604
		H. L. McQueen	20.40	605

				Vouchers.
1892.				
Feb'y	29.	F. S. Arnold, Feb., 1892	$25.00	606
	1.	W. H. Cooper	3.60	607
	29.	Sundries, February, 1892	13.82	608
M'ch	1.	W. H. Cooper	10.60	609
		G. M. Fague	.50	610
	3.	Rent, March, 1892	35.00	611
	7.	F. S. Jones	3.20	612
	9.	Jules Boenfre	6.00	613
	10.	F. S. Jones	6.80	614
	21.	O. C. Henderson	17.50	615
	24.	Miscellaneous	2.00	616
		Sundries March 1892	18.85	617
Apr.	2.	W. H. Cooper	14.70	618
		F. S. Arnold, March, 1892	25.00	619
		Rent April 1892	35.00	620
	8.	H. L. McQueen	12.50	621
	9.	J. G. Hodges	1.30	622
	18.	G. S. Gerston	5.00	623
	22.	London draft, H. F. & Gibson	25.00	624
	30.	McGill & Wallace	3.60	625
		" "	18.30	626
		" "	7.20	627
		" "	3.00	628
		" "	5.40	629
		" "	2.70	630
		" "	1.80	631
		Sundries, April, 1892	6.53	632
May	1.	F. S. Arnold, April, 1892	25.00	633
		Carried forward	$20793.65	
218				
		Brought forward	$20793.65	
May	3.	McGill & Wallace	1.80	634
		John Randolph	3.90	635
	5.	McGill & Wallace	5.40	636
	6.	" "	3.60	637
		" "	3.60	638
	7.	Rent for May, 1892	35.00	639
	12.	McGill & Wallace	3.60	640
		" "	7.20	641
		" "	3.60	642
		" " ($32.40)	3.60	643
	31.	Sundries May 1892	11.64	644
June	8.	Rent for June, 1892	35.00	645
	17.	W. H. Cooper	9.35	646
	1.	F. S. Arnold, May, 1892	35.00	647

					Vouchers.
1892.					
June	14.	McGill & Wallace		$3.60	649
		" "		2.70	650
		" "		2.70	651
		" "		3.60	652
		" "		24.00	653
		" "		1.80	654
		" "		2.70	655
		" "	($42.90)	1.80	656
	19.	Telegram		.25	657
		"		.53	658
		"		.40	659
		"		.50	660
	20.	H. L. McQueen		1.85	661
		McGill & Wallace		5.40	662
		" "		1.80	663
		" "	($10.80)	3.60	664
	28.	" "		1.80	665
219		Carried forward		$21006.95	
July	28.	Brought forward		$21006.95	
		McGill & Wallace		3.60	666
		Do.		7.20	667
		Do.		1.80	668
		Do.	($19.80)	5.40	669
	2.	Rent July, 1892		35.00	670
	1.	F. S. Arnold, June 1892		25.00	671
	31.	Sundries June and July, '92		21.57	672
Aug.	1.	F. S. Arnold, July 1892		25.00	673
		Rent, August, 1892		35.00	674
Sept.	1.	W. H. Cooper		7.10	675
		Rent, September, 1892		35.00	676
		F. S. Arnold, August, 1892		25.00	677
Oct.	1.	September, 1892		25.00	678
Oct.	1.	Rent, October 1892		35.00	679
	13.	McGill & Wallace		2.70	680
		Do.		2.70	681
		Do.		3.00	682
		Do.		4.80	683
		Do.		2.70	684
		Do.		3.60	685
		Do.		2.70	686
		Do.		2.70	687
		Do.		4.07	688
		Do.	($30.77)	1.80	689
Nov.	1.	F. S. Arnold, October, 1892		25.00	690
		Rent November 1892		35.00	691

				Vouchers.
1892.				
Nov.	6.	Jules Bouefoe	$12.50	692
		Jules Bouefoe	5.50	693
	12.	McGill & Wallace	9.00	694
		Do.	9.00	695
		Do.	3.60	696
		Do ($24.30)	2.70	697
		Carried forward	$21426.69	

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1892–'3.				
Dec.	1.	Brought forward	$21426.69	
		F. S. Arnold, November 1892	25.00	698
		Rent for November, 1892	35.00	699
	29.	E. de Carvallo	19.70	700
	31.	F. S. Arnold, December 1892	25.00	701
Nov.	17.	Documents, etc	10.00	702
Dec.	31.	Sundries, Aug., Sept., Oct., Nov., Dec., 1892	31.23	703
1893.				
Jan'y	6.	Rent January, 1893	35.00	704
	7.	McGill & Wallace	31.75	705
		Do.	1.80	706
		Do.	2.70	707
		Do.	1.80	708
		Do.	2.70	709
		Do.	3.60	710
		Do.	25.25	711
		Do.	3.60	712
		Do.	1.80	713
		Do.	2.70	714
	26.	W. H. Cooper	13.30	715
	31.	Fowler Manufacturing Company	1.12	716
		Sundries, January 1893	22.04	
Feb'y	1.	F. S. Arnold, January, 1893	25.00	718
	4.	Rent for February, 1893	35.00	719
	28.	Sundries, February, 1893	16.01	720
M'ch	1.	F. S. Arnold, February, 1893	25.00	721
		Rent, March, 1893	35.00	722
	9.	Gas	1.20	723
	10.	Mrs. Day	4.70	724
	15.	McGill & Wallace	5.40	725
		Do.	2.70	726
		Do.	2.70	727
		Do.	3.60	728
		Carried forward	$21888.09	

				Vouchers.
221				
1893.				
M'ch	15.	Brought forward	$21,888.09	
		McGill & Wallace	1.80	729
		Do.	6.30	730
		Do.	3.60	732
		Do.	4.50	731
		Do.	5.40	734
		Do.	3.60	735
		Do.	2.70	736
		Do.	4.50	737
		Do.	2.70	738
		Do.	3.60	739
		Do.	4.50	740
		Do.	2.70	741
		Do.	1.80	742
		Do.	2.70	743
		Do.	2.70	744
		Do.	2.70	745
		Do.	1.80	746
		Do.	2.70	747
		Do.	1.80	748
		Do.	2.70	749
		Do.	3.60	750
		Do.	2.70	751
		Do.	5.40	652
		Do.	7.65	753
		Do.	5.40	754
		Do.	7.20	755
			5.25	756
	30.	New Publishing Company	2.00	757
		Miscellaneous	1.00	758
		Sundries March, 1893	8.92	759
Apr.	1.	F. S. Arnold, March, 1893	25.00	760
		Carried forward	$22040.51	
222				
		Brought forward	$22040.51	
April	3.	Rent April 1893	35.00	761
	17.	Evening News	2.00	762
	30.	Sundries for April, 1893	8.30	763
May	1.	F. S. Arnold	25.00	764
		Fowler Company, April 1893	.38	765
		Fowler Company, March 1893	.37	766
		Rent for May, 1893	35.00	767
		Gas	.55	768
	5.	J. J. Decker	7.50	769
		Special correspondence letters	13.70	770

1893.				Vouchers.
May	2.	J. F. Sanner	$ .75	771
		Fowler Company, May, 1893	.38	772
June	1.	Rent for June, 1893	35.00	773
		F. S. Arnold, May 1893	12.50	774
	2.	Clerk, Ct. of Cl'ms Bussey	4.00	775
	23.	Jules Boeufoe	10.00	776
		Jules Boufoe	8.50	777
	30.	Sundries for June 1893	1.75	778
July	1.	Rent for July, 1893	35.00	779
		F. S. Arnold, June, 1893	25.00	780
	10.	H. W. Cooper	19.13	781
July	15.	Carried forward	$22320.32	

223 COMPLAINANT'S EXHIBIT No. 2.

No.	Claimant.	Amount of judgment.
3443.	William G. Perry, adm'r, Nicholas Gilman	$198.00
3443.	Horatio Hunnewell, adm'r, Arnold Welles, Jr.	396.00
	(Filed December 7, 1891.)	
1999.	Horace Obear, adm'r, Josiah Obear	1705.68
	(Filed April 23, 1898.)	
2494.	Franklin Leach, adm'r, Nathan Leach	126.00
	(Filed April 23, 1898.)	
842.	Charles Francis Adams, Jr., adm'r, Peter C. Brooks	5500.00
	(— April 23, 1898.)	
2347.	A. M. Lee in place of R. Stewart Strobel and Henry L. Burns, adm'r's *d. b. n.* of Thomas Stewart	6061.93
	(June 20, 1892.)	
3543.	Thomas H. Perkins, adm'r, John C. Jones	500.00
3543.	William S. Carter, admi'r, William Smith	1000.00
3543.	Philo S. Shelton, ex'r, Benjamin Homer	500.00
3543.	John C. Ropes, adm'r, Thomas Amory	1000.00
3543.	William G. Perry, adm'r, Nicholas Gilman	1000.00
3543.	David G. Haskins, adm'r, David Greene	1000.00
3543.	John H. Moriarty, adm'r, James Scott	500.00
	(Filed June 20, 1892.)	
232.	Charles Francis Adams, adm'r, Peter C. Brooks	3000.00
232.	Thomas H. Perkins, adm'r, John C. Jones	1000.00
	(Filed April 4, 1892.)	
3317.	William G. Perry, adm'r, Nicholas Gilman	1000.00
3317.	Robert Grant, adm'r, W. H. Boardman	1000.00
	John H. Moriarty, adm'r, James Scott	500.00
	(Filed April 4, 1892.)	

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129.	Thomas Cushing, adm'r Marston Watson.....	10,846.57
260.	William Sohier, adm'r Nathaniel Fellowes.....	2,000.00
260.	Charles Francis Adams, adm'r Peter C. Brooks...	2,500.00
260.	Thomas H. Perkins, adm'r J. C. Jones.....	1,000.00
260.	Frederick O. Prince, adm'r James Prince.....	500.00
3612.	James C. Davis, adm'r Cornelius Durant.....	300.00
	(Filed, November 4, 1887.)	
130 & 131.	John C. Parsons, adm'r John Caldwell.....	12,412.17
3540.	William Sohier, adm'r Nathaniel Fellowes.....	1,000.00
3540.	Frank Dabney, adm'r Samuel Wyllys Pomeroy...	1,000.00
3540.	Lawrence Bond, adm'r Nathan Bond.....	500.00
3540.	Henry R. Rodgers, ex'r Daniel D. Rogers.....	500.00
	(May 6, 1889.)	
132.	Thomas Cushing, adm'r Marston Watson.....	6,555.00
258.	Charles Francis Adams, adm'r Smith, Greene, and Bussey.....	3,000.00
142.	R. Stewart Strobel, *et al.* adm'rs Thomas Stewart...	6,350.00
	(Filed December 6, 1886.)	
145.	Francis King Cary, adm'r Samuel Hollingsworth.....	2,384.57
146.	Francis King Cary, adm'r Samuel Hollingsworth.....	1,961.12
570.	Sands Smith, adm'r William Respass.....	2,210.00
	(Filed November 7, 1887.)	
155.	Francis King Cary, adm'r Samuel Hollingsworth.....	5,960.00
	(Filed December 6, 1886.)	
161.	Julia M. Sands, executrix Comfort Sands.....	7,318.60
	(December 31, 1888.)	
165.	Thomas H. Perkins, adm'r John C. Jones.....	640.00
165.	William Sohier, adm'r Nathaniel Fellowes.....	700.00

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2734.	Richard H. T. Taylor, adm'r Joshua Hilton.....	8,017.00
177.	Thomas H. Perkins, adm'r John C. Jones.....	1,500.00
177.	Charles Francis Adams, adm'r Peter C. Brooks...	2,000.00
207.	William Sohier, adm'r Nathaniel Fellowes.....	1,000.00
207.	William Vernon adm'r Samuel Brown.....	1,000.00
	(Filed November 7, 1887.)	
179.	Franklin Leach, adm'r William Leach.....	3,577.88
136.	Edward I. Brown, adm'r Israel Thorndyke.....	1,003.73
3438.	Frank Dabney, adm'r Samuel W. Pomeroy.....	600.00
3439.	Thomas H. Perkins, adm'r John C. Jones.....	500.00
3439.	John C. Ropes, adm'r Thomas Amory.....	1,000.00
4685.	H. Hollis Hunnewell, adm'r Arnold Welles.....	400.00
4659.	William G. Perry, adm'r Nicholas Gilman.....	300.00
	(Filed June 8, 1891.)	

193.	Charles Francis Adams, adm'r Peter C. Brooks, as assignee of Tuthill Hubbard and as assignee of Isaac Rands, adm'r Caleb Hopkins.....	1,200.00
	(Filed May 31, 1892.)	
228.	Thomas B. Ghequiere, adm'r Charles Ghequiere..	3,849.16
1709.	John Stewart, receiver Baltimore Insurance Company	1,400.00
	(Filed May 31, 1892.)	
	(F. P. Clark substituted as attorney in 1899.)	
226		
2271.	David Stewart and John E. Semmes, receivers Maryland Insurance Company.....	8,820.00
	(Filed May 31, 1892.)	
	(F. P. Clark, substituted in 1899.)	
233.	Charles Francis Adams, adm'r Peter C. Brooks...	850.00
2707.	David G. Haskins, adm'r David Greene.....	6,338.00
	(Filed January 9, 1888.)	
239	Charles Francis Adams, adm'r Homer, Hubbard, Sargent and Pomeroy	2,341.86
330.	Charles Francis Adams, adm'r Peter C. Brooks...	1,000.00
330.	William Sohier, adm'r Nathaniel Fellowes.....	1,000.00
	(January 18, 1892.)	
	(J. M. Wilson substituted as attorney in 1899.)	
345.	Charles Francis Adams, adm'r Peter C. Brooks, assignee of William Smith	500.00
345.	Charles Francis Adams, adm'r Peter C. Brooks, assignee Stephen Gorham.....	500.00
345.	Charles Francis Adams, adm'r Peter C. Brooks, assignee Daniel Sargent.....	500.00
345.	Charles Francis Adams, adm'r Peter C. Brooks, assignee Isaac Rands, adm'r Caleb Hopkins....	500.00
345.	Charles Francis Adams, adm'r Peter C. Brooks, assignee John Brazer.....	500.00
345.	Charles Francis Adams, adm'r Peter C. Brooks, assignee Tuthill Hubbard.....	500.00
345.	Thomas H. Perkins, adm'r John C. Jones	500.00
345.	Robert C. Mackay, ex'r William Mackay	500.00
345.	Ebenezer Gay, ex'r Ebenezer Gay, assignee of Thomas English.....	500.00
345.	William Sohier, adm'r Nathaniel Fellowes.....	500.00
	(November 14, 1887.)	
227		
348.	Sarah S. Owings and Francis R. Griffith admxs. of Nicholas Owings, surviving partner of Rogers and Owings.....	5,638.25
348.	William E. Woodyear, adm'r Jeremiah Yellott...	5,638.25

999.	John Stewart receiver of the Baltimore Insurance Company	10,000.00
	(December 17, 1888.)	
3505.	Robert Grant, adm'r William H. Boardman	300.00
3505.	Horatio Hunnewell, ex'r John Welles	300.00
	(November 14, 1892)	
	(J. M. Wilson substituted as attorney in 1899.)	
381.	Esther S. Buchanan, adm'x, representing Smith and Buchanan	11,660.21
1003.	Robert Carter Smith, adm'r representing Samuel Smith	6,738.21
770.	Cumberland D. Hollins, adm'r representing John Hollins	4,922.00
996.	John Stewart, receiver Maryland Insurance Company	19,502.00
	(December 7, 1891.)	
	(F. P. Clark, substituted as attorney.)	
383.	John C. Tillman, adm'r William Van Wyck	6,024.96
784.	Joseph Young, by Rebecca R. and Elizabeth Y. Thompson, admxs	5,597.46
997.	David Stewart and Jane E. Semmes, receivers of the Maryland Insurance Company	11,760.00
262.	William Donnell adm'r John Donnell	1,960.00
262.	Edward C. Noyes and David Stewart, adm'rs James Clark	980.00
262.	Cumberland D. Hollins, adm'r Cumberland Dugan	1,500.00
262.	David Stewart adm'r William MacCreery	980.00
262.	Charles J. Bonaparte, *et al.* adm'rs Benjamin Williams	980.00
228		
262.	David Stewart, adm'r Paul Bentalou	980.00
262.	John W. Jenkins, adm'r John Hillen	980.00
262.	David Stewart adm'r Henry Payson	490.00
262.	Robert Shriver, adm'r Isaac Causten	490.00
	(April 4, 1892.)	
	(J. Semmes substituted as attorney in 1899.)	
386.	Ebenezer D. Secomb, adm'r Phillip Bessom	23,180.00
	(November 30, 1891.)	
	(J. Wilson substituted in 1899.)	
388.	William E. Woodyear, adm'r Jeremiah Yellott	7,176.34
395.	Charles Francis Adams, adm'r Peter C. Brooks	1,500.00
395.	William Sohier adm'r Nathaniel Fellowes	1,000.00
395.	Horatio Hunnewell, ex'r John Welles	500.00
	(January 20, 1890.)	
421.	Charles Francis Adams, adm'r Peter C. Brooks assignee of Tuthill Hubbard, William Smith, David Green and Caleb Hopkins	1,201.00

421. William Sohier adm'r Nathaniel Fellowes..... 210.00
(November 14, 1887.)
444. Safe Deposit and Trust Company, adm'r Alexander Mactier..... 2,300.00
841. Henry L. Dashiell and David Stewart adm'rs James Corrie..... 2,300.00
(November 28, 1887.)
497. Charles Francis Adams, adm'r Peter C. Brooks, assignee of William Smith, Daniel Rogers, David Greene, Benjamin Burney, Benjamin Homer, and Tuthill Hubbard..... 5,460.00
497. William Vernon, adm'r Samuel Brown..... 2,100.00
497. H. Burr Crandall, adm'r Thomas Dickason..... 1,050.00
(November 28, 1887.)

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133. Dayton S. Ward, adm'r James Barry..... 8,502.00
(December 31, 1886.)
(Curtiss, Pickett & Earle, substituted attorneys.)
571. Mary T. Latrobe, adm'r Thomas Temant..... 8,953.18
1802. John Stewart, receiver of the Maryland Insurance Company 20,000.00
(February 11, 1889.)
2882. Charles F. Taylor, adm'r Henry Schroeder..... 4,427.44
(March 21, 1892.)
(F. P. Clark substituted attorney.)
777. Catherine M. Singleton, adm'x Alexander McKim..... 1,497.89
2170. John Stewart, receiver Maryland Insurance Company..... 19,110.00
(December 2, 1889.)
(F. P. Clark substituted attorney.)
279. Samuel R. Adams, adm'r Richard Veitch 19,762.00
2628. Anthony Hyde and Charles M. Matthews, ex'rs W. W. Corcoran..... 79.09
2628. James M. Johnson, adm'r George W. Riggs..... 79.09
2628. Robert S. Chew, adm'r Richard Smith..... 79.09
2187. John Stewart, receiver Maryland Insurance Company..... 5,950.00
2293. George H. Williams, adm'r, Samuel Williams..... 1,583.59
(December 2, 1889.)
(J. E. Semmes substituted as attorney.)
2293. Charles J. Bonaparte, adm'r Benjamin Williams.. 1,583.59
4879. David Stewart, adm'r Francis Johannet..... 5,723.18
846. William D. Lee, Thomas D. Lee, Henry A. Lee, Joseph A. Lee and Virginia Waters, adm'rs William Duncan..... 10,407.27

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2177.	John Stewart, receiver Maryland Insurance Company	$8,000.00
	(January 21, 1889.)	
1495.	George M. Gill, ad'r Gabriel Wood	19,776.00
3094.	David Stewart, adm'r Henry Lee	2,432.00
	(November 14, 1887.)	
236.	Charles Francis Adams, Jr. adm'r Peter C. Brooks, assignee of Tuthill Hubbard, Greene and Homer	2,000.00
236.	William Schier, adm'r Nathaniel Fellowes	700.00
236.	H. Burr Crandall, adm'r Thomas Dickason, Jr.	500.00
3017.	Horatio H. Hunnewell, adm'r Arnold Welles, Jr.	300.00
	(March 28, 1892.)	
893.	Charles Francis Adams, adm'r Peter C. Brooks	3,456.40
893.	Thomas H. Perkins, adm'r John C. Jones	509.40
893.	William Schier, adm'r Nathaniel Fellowes	1,018.80
	(January 21, 1889.)	
896.	Charles Francis Adams, adm'r Peter C. Brooks	867.50
3654.	William Schier, adm'r Nathaniel Fellowes	1,433.75
3654.	William S. Carter, adm'r William Smith	1,000.00
3654.	Robert Grant, adm'r William H. Boardman	400.00
3654.	Frank Dabney, adm'r Samuel W. Pomeroy	600.00
	(June 11, 1888.)	
898.	Charles Francis Adams, adm'r Peter C. Brooks	487.06
898.	Frank Dabney, adm'r Samuel Pomeroy	243.53
898.	Philo B. Shelton, adm'r Benjamin Homer	243.53
	(January 7, 1889.)	
	(J. M. Wilson substituted.)	
951.	John M. Carrere and David Stewart, adm'r John Carrere	1,344.50
1660.	John Stewart, receiver, Baltimore Insurance Co.	10,000.00
	(December 10, 1888.)	

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1576.	Wilmon W. Blackmar, adm'r Francis Amory	12,341.40
	(January 14, 1889.)	
964.	Charles Francis Adams, adm'r Peter C. Brooks	2,739.00
964.	William Schier, adm'r Nathaniel Fellowes	664.00
964.	William Vernon, adm'r Samuel Brown	498.00
3498.	William G. Perry, adm'r Nicholas Gilman	332.00
3498.	Charles K. Cobb, adm'r John Codman	166.00
3498.	Edward I. Browne, adm'r Israel Thorndike	83.00
3498.	John C. Ropes, adm'r Thomas Amory	664.00
3498.	Thomas Cushing, adm'r Marston Watson	332.00
3498.	Robert Grant, adm'r W. H. Boardman	166.00
3498.	David G. Haskins, adm'r David Greene	166.00
3499.	Horatio H. Hunnewell, ex'r John Welles	166.00
3498.	William P. Perkins, adm'r Thomas Perkins	166.00

3498.	Horatio H. Hunnewell, adm'r Arnold Welles, Jr..	116.20
3498.	Horatio H. Hunnewell, adm'r Arnold Welles.. ...	332.00
3498.	Edward J. Browne, adm'r Moses Brown.....	66.40
3498.	Frank Dabney, adm'r Samuel Wyllys Pomeroy..	166.00
3498.	Laurence Bond, adm'r of Nathan Bond	83.00
3498.	Edward Hooper, adm'r Benjamin Bussey	332.00
	(January 4, 1889.)	
976.	Charles G. Wood, adm'r Abner Wood.....	2,150.00
783.	Charles Francis Adams, adm'r Peter C. Brooks assignee of Smith and Greene.....	2,000.00
783.	William Sohier, adm'r Nathaniel Fellowes.....	1,000.00
	(December 31, 1888.)	
980.	Frederick J. Huntington, adm'r Jabez Huntington.....	3,583.09
518.	Charles Francis Adams, adm'r Peter C. Brooks...	1,600.00
	(May 28, 1888.)	
232		
518.	James Tisdale, by John Wetherbe, adm'r.....	600.00
	(May 28, 1888.)	
1066.	John S. Cole, adm'r John Storer	10,568.00
	(January 18, 1892.)	
	(Curtis, Pickett and Earle substituted attorneys.)	
1087 and 1088.	W. H. Harris, adm'r William Patterson.	20,334.16
	(February 23, 1892.)	
	(Semmes substituted attorney.)	
1483.	James G. Freeman, receiver Boston Marine Insurance Company.....	3,465.00
3162.	Catherine C. Woodside, adm'r William Stamwood.....	2,785.11
	(January 9, 1888.)	
1536.	John M. Carrere and David Stewart, adm'rs John Carrere.....	2,207.00
1695.	John Stewart, receiver Baltimore Insurance Company.....	11,000.00
	(December 19, 1888.)	
1579.	Henry W. Rogers, adm'r John Bradish.	3,414.50
1579.	Robert S. O. Griffith, adm'r Nicholas Owings.....	682.50
1622.	John Stewart, adm'r Baltimore Insurance Co.....	4,410.00
1584.	Henry A. T. Granberry, adm'r John Granberry...	109.01
1584.	R. Manson Smith, adm'r Francis Smith.....	118.92
1584.	John Neely, adm'r John Cowper	148.65
1584.	Gilbert R. Fox, Jr., adm'r Thomas Willock	137.84
	(March 21, 1892.)	
	(Curtis, Pickett and Earle substituted as attorneys.)	
1761.	John C. McDonald, adm'r William McDonald...	4,914.00
	(January 25, 1892.)	
	(Curtis, Pickett & Earle substituted.)	

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1781.	John Stewart, receiver of the Baltimore Insurance Company	12,860.00
2072.	R. T. O. Griffith, adm'r Beall Owings	3,822.12
	(December 31, 1888.)	
2278.	David Stewart and John E. Semmes, receivers Maryland Insurance Co	4,666.66
	(May 21, 1892.)	
1843.	George S. Sontag, adm'r William L. Sonntag	7,886.50
1946.	John J. De la Roche, adm'r Frederick De la Roche	7,886.50
	(February 15, 1892.)	
	(Curtiss, Pickett & Earle substituted attorneys.)	
1844.	George S. Sonntag, adm'r W. L. Sonntag	3,264.50
1845.	Jane J. De la Roche, adm'x of Frederick De la Roche	3,264.50
	(June 8, 1891.)	
	(Curtiss, Pickett & Earle, attorneys, substituted.)	
1850.	John M. Carrere and David Stewart, adm'rs John Carrere	11,744.96
	(J. Semmes, substituted attorney.)	
1973.	Isaac Brewster, adm'r Daniel Jackson	3,567.00
	(December 2, 1889.)	
2879.	Charles G. Davis, adm'r William Davis	992.00
	(December 9, 1889.)	
	(J. M. Wilson substituted attorney.)	
169.	Charles Francis Adams, adm'r Peter C. Brooks	400.00
169.	H. B. Crandall, adm'r Thomas Dickason	400.00
3509.	David G. Haskins, adm'r David Greene	500.00
3509.	Frank Dabney, adm'r Pomeroy	500.00
3509.	Robert Grant, adm'r William H. Boardman	300.00
	(March 19, 1890.)	
1991.	John O. Allmand, adm'r Harrison Allmand	3,113.33
1991.	R. Manson Smith, adm'r Francis Smith	6,233.33
	(November 14, 1887.)	

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3859.	Gilbert R. Fox, adm'r Thomas Willock	6,233.33
	(November 14, 1887)	
2008.	William Donnell, adm'r John Donnell	6,659.99
2008.	George W. Brown, adm'r James A. Buchanan	4,609.99
2008.	Robert Carter Smith, adm'r Samuel Smith	4,609.99
2011.	Esther S. Buchanan, adm'x William B. Buchanan	25,056.00
2011.	Cumberland D. Hollis, adm'r John Hollins	7,600.00
	(April 22, 1899)	
2272.	John Stewart, receiver Maryland Insurance Company	28,000.00
	(April 22, 1899.)	
	(Semmes substituted as attorney.)	

2073.	Ann E. Marshall, adm'x William Robb.....	8,475.00
	(December 30, 1888.)	
2160.	Benjamin H. Rutledge, adm'r Adams Tunno.....	21,167.80
2162.	Gordon Gardiner, adm'r James Gardiner.....	4,833.93
2829.	Henry E. Young, adm'r James Turnbull.....	700.00
4626.	Henry E. Young, adm'r James Carson.....	1,700.00
	(May 31, 1892.)	
	(Curtis, Picket and Earle substituted as attorneys.)	
2173.	John Stewart, receiver Maryland Insurance Company	24,366.00
	(November 19, 1888.)	
2178.	David Stewart, and John E. Semmes, receivers Maryland Insurance Co.....	3,550.00
2345.	Alexander Proudfit, adm'r John Proudfit.....	6,951.00
	(May 26, 1892.)	
	(Curtis, Pickett and Earle substituted.)	
336.	John C. Williams, adm'r Edward Durant.....	1,260.00
	(March 7, 1892.)	
	(Curtis, Pickett and Earles substituted.)	
235		
3214.	John N. A. Griswold, trustee United Insurance Company of the City of New York.....	35,280.00
	(November 19, 1888.)	
1865.	Charles Francis Adams, adm'r Peter C. Brooks....	2,700.00
1865.	William Schier, adm'r Nathaniel Fellowes.....	500.00
1865.	William Vernon, adm'r Samuel Brown.....	600.00
	(March 28, 1892.)	
3428.	Stephen R. Rodgers, adm'r Joseph Rogers.....	1,733.33
1808.	Charles Francis Adams, adm'r Peter C. Brooks, assignee Sargent, Bridge and Hubbart...	2,000.00
	(December 31, 1888.)	
	(J. Wilson substituted as attorney.)	
3663.	David G. Haskins, adm'r David Greene.....	1,000.00
3663.	Robert Grant, adm'r William H. Boardman.....	400.00
3663.	William S. Carter, adm'r William Smith.....	1,000.00
3663.	Laurence Bond, adm'r Nathan Bond.....	400.00
3663.	John Lowell, Jr. adm'r Tuthill Hubbart.....	500.00
3663.	William Sohier, adm'r Nathaniel Fellowes.....	1,000.00
	(December 31, 1888.)	
	(J. M. Wilson, substituted attorney.)	
931.	Charles Francis Adams, adm'r Peter C. Brooks...	9,900.00
931.	Thomas H. Perkins, adm'r John C. Jones.....	500.00
931.	William Sohier, adm'r Nathaniel Fellowes.....	3,000.00
3648.	John C. Ropes, adm'r Thomas Amory.....	300.00
	(April 23, 1892.)	
505.	Payson and Holbrook.....	6,302.00
249.	Jeffrey & Russell, represented by Charles F. Hunt.	1,000.00

252. Tuthill Hubbart, represented by Charles Francis Adams, adm'r Peter C. Brooks..... 500.00
252. Benjamin Homer, Daniel D. Rogers and David Greene, represented by Charles Francis Adams, adm'r Peter C. Brooks, each $500..... 1,500.00
(December 6, 1886.)

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249. Thomas English, represented by Ebenezer Gay... 500.00
249. Tuthill Hubbart and William Smith, represented by Charles Francis Adams, Jr., adm'r, Peter C. Brooks, $1,000 each..... 2,000.00
(December 6, 1886.)

237 EXHIBIT A.

Duplicate.

The Causten Agency of French Spoliation Claims.

This agreement, this day made and entered into between John C. Ropes of Boston, in the State of Massachusetts, administrator, *de bonis non* with the will annexed of the estate of Thomas Amory late of Roxbury in said State, and Wm. E. Earle, of Washington, D. C. attorney and counselor at law, witnesseth as follows:

The first party believing that he is entitled to recover for losses by French spoliation, and claims of this class being referred to the Court of Claims; and he having given to the second party a power of attorney, of even date herewith, to collect the same; now, in consideration of the services to be rendered by the second party, the first party hereby agrees to pay him therefor the sum of twenty-five per cent. of such amount, as shall be collected of, for, or on account of said claim, and to advance thereon the sum of two hundred dollars as retainer and to cover all expenses including printing and the taking of testimony, which sum is to be deducted from the twenty-five per cent. above stated when the claim is recovered.

And the second party is to prosecute said claim at his own cost and charge, and without other retainer or advances, and for the compensation herein stipulated he is hereby given a lien on the warrants or drafts for the sum or sums recovered to the extent of twenty-five per cent. above stated.

238 Witness our hands and seals this first day of September, A. D. 1885.

JOHN C. ROPES, *Adm'r.* [SEAL.]
WM. E. EARLE. [SEAL.]

Received two hundred dollars as retainer on this contract, the same to be deducted from whatever sum may become due the second party thereunder.

WM. E. EARLE.

239 Successor to Wm. E. Earle.

Telephone 677.
Cable address ERL.

Law offices of Henry M. Earle, 1417 G street N. W.

WASHINGTON, D. C., *November* 22, 1894.

DEAR SIR: Your letter of even date received. My mother recently qualified as the executrix of the estate of William E. Earle, under a will made 13 years ago. She has given me a full power of attorney, and I have in charge the entire matter.

In relation to the French spoliation claims I have not forgotten my understanding to report to you, and I will have a talk with you or your attorney on the subject in a few days.

Very truly yours, HENRY M. EARLE.

Thomas E. Waggaman, Esq., Washington, D. C.

240 Whereas heretofore John C. Ropes of Boston, Mass., acting as administrator of the estate of Thomas Amory, entered into a certain contract with William E. Earle, attorney at law, of Washington, D. C., whereby said Earle was to prosecute all and any of the French spoliation claims of said estate; and

Whereas said Earle did perform services under said contract, and was at considerable expense in the prosecution of said claims; and

Whereas said Earle departed this life August 13, 1894, and said estate is desirous that the contract with said Earle looking to the prosecution of said claims be carried out;

Now, therefore, this agreement, this day made and entered into by and between the said John C. Ropes, of Boston aforesaid, as administrator of said estate, party of the first part, and William T. S. Curtis, Theodore J. Pickett, and Henry M. Earle, or the survivor of them, of Washington, D. C., parties of the second part, witnesseth:

That, for the purpose of completing the prosecution of any and all of the French spoliation claims of said estate, the party of the first part, in consideration of services rendered and to be rendered by the parties of the second part, hereby stipulates and agrees that said second parties be substituted in the place and stead of said William E.

241 Earle in the contract heretofore made by and between said estate and said Earle, upon the same terms and conditions as to services to be performed and fee to be paid as in said former contract provided. And the parties of the second part are to continue the prosecution of said claims at their own cost and charge, without further retainer or advances, and for the compensation in said contract stipulated they are given a lien on the warrants or drafts for the sum or sums recovered to the extent as provided in the aforesaid contract with said William E. Earle.

Witness our hands and seals this 24th day of October, 1894.

[SEAL.] JOHN C. ROPES,
Administrator de bonis non with the Will Annexed of the Estate of Thomas Amory.

242 EXHIBIT "E." Jan. 10/02. No. 1.

Agreement.

This agreement, made this twenty-fourth day of February, in the year 1900, between Henry M. Earle of the city of New York and State of New York, administrator, *d. b. n., c. t. a.* of William E. Earle, deceased of the first part, and John Stewart, David Stewart and the Safe Deposit and Trust Company, administrator of Robert Riddell Brown, John E. Semmes and Frank P. Clark, all of the city of Baltimore and State of Maryland, parties of the second part.

Whereas on the third day of March, eighteen hundred and eighty-six, an agreement was entered into between the said William E. Earle and the parties of the second part, which was modified by another agreement dated the thirteenth day of July, eighteen hundred and ninety-two, between the same parties, copies of which two agreements are in terms as follows:

Agreement of July 13th, 1892.

Whereas on March 3rd, 1886, an agreement was made between William E. Earle of the city of Washington, D. C. of the first part, John Stewart, Robert Riddell Brown and David Stewart of the city of Baltimore, Maryland, of the second part, and Frank P. Clark and John E. Semmes of the same city, of the third part, for the purpose of prosecuting French spoilation claims which at the time they accrued belonged to citizens of Maryland; and

Whereas differences of opinion have arisen between said parties as to the correct construction and interpretation of said agreement; and

243 Whereas all parties moved by a desire to have these differences removed and to reach a just and equitable understanding of their mutual obligations; and to settle all matters of difference which have arisen between them;

Now, therefore, in consideration of the premises and of their mutual obligations and interests in said agreement, it is further stipulated and agreed as follows, to wit:

First. That the terms "fees, compensation" and "commissions" in article 7 of said agreement shall be construed and held to relate solely to those fees, compensation and commissions which have been and shall be recovered from claimants for the prosecution of their claims before the Court of Claims, namely, the 33⅓ % provided for in the agreement where this rate is agreed upon and 25 % in insurance cases and 25 % in such cases where the same was agreed

upon according to the terms of the agreement of March 3rd, 1886, and shall not in any way relate to commissions received when the same are earned as receivers or executors or fees earned where any or either of the parties may be engaged or employed in the distribution of the funds.

Second. That the fixed allowances to the parties in lieu of expenses shall be mutually settled and the difference paid at once, and that such costs of official records or other evidence, clerk's and bailiff's fees, printing of evidence actually paid by the party of the first part, and the expenses of proving identity and survivorship incurred by the parties of the second and third parts shall be mutually settled on presentation of itemized statements thereof.

Third. That the parties of the second and third parts or any of them shall not in anywise be liable for any expenses already
244 incurred or that shall hereafter be incurred by the party of the first part in passing or endeavoring to pass or secure an appropriation for the payment of any of these claims.

Fourth. The last part of paragraph 6 of said agreement shall not be construed to obligate the party of the first part to continue the employment of Messrs. Shellabarger & Wilson; but he may employ any counsel to aid him as he may deem most desirable and useful, but their compensation is to be paid by him, and there is to be no liability upon the parties of the second and third parts for any portion thereof.

In witness whereof said parties have hereunto set their hands and affixed their seals this thirteenth day of July, A. D. 1892.

—— ——. [SEAL.]
—— ——. [SEAL.]
—— ——. [SEAL.]
—— ——. [SEAL.]
—— ——. [SEAL.]
—— ——. [SEAL.]

Witness to signature of William E. Earle,
—— ——.

This agreement made this 3rd day of March, 1886, between William E. Earle of the city of Washington, D. C. of the first part, John Stewart, Robert Riddell Brown, and David Stewart of the city of Baltimore, Md., of the second part, and Frank P. Clark and John E. Semmes of the same city of the third part:

Whereas, the parties hereto are all engaged in an effort to gain control of certain claims against the United States, known as French spoilation claims, and desire to co-operate in securing and
245 prosecuting such claims, and to share the profits arising therefrom.

Now this agreement witnesseth, that in consideration of the premises and of the mutual covenants herein contained, the said party of the first part covenants that he is entitled to the custody and control of the Causten papers; and that he will give all assistance pos-

sible from the said papers in identifying and ascertaining the claimants, and in proving the claims included under this agreement, and for this purpose will allow any one of the parties of the second and third parts or any persons named by them to have always full and free access to said papers, and will bear all expense of indexing and arranging said papers incident to the giving of information contained therein.

Second. That the party of the first part covenants to take charge and control of all claims included under this agreement, and to prosecute the same before the Court of Claims of the United States, or before any of the departments of the United States Government, or before Congress, or before any officer, commissioner, or tribunal especially authorized to take cognizance of said claims, or through any diplomatic negotiations that may be deemed best for the interest of said claimants, and shall bear all charges and every expense that may be incurred in so prosecuting said claims, subject to the provision relating to expenses hereinafter stated.

Third. That the parties of the second and third parts, in consideration of the premises, covenant to use their best efforts to procure from the parties representing the claims included under this
246 agreement, powers of attorney, and contracts empowering them and the said party of the first part to prosecute and collect said claims, and to bear all expenses of obtaining such contracts, and of proving the right of the claimant in and to such claims, subject to the provision relating to expenses hereinafter stated.

Fourth. That the claims included under this agreement, are those originally owned by residents of Maryland, and that every such claim obtained by the parties hereto in the past, or to be obtained by them in the future, shall be prosecuted by the said party of the first part for the benefit of all parties hereto as hereinafter provided. And that while it shall be the special duty of the parties of the second and third parts to secure claims, and of the party of the first part to prosecute and prove them, all said parties shall mutually assist each other in all respects within their power in obtaining and realizing such claims.

Fifth. That all the claims herein described already secured by any of the parties hereto, shall be prosecuted for the compensation set forth in the contract of employment, but that the regular fee hereafter charged shall be thirty-three and one-third per cent. of the gross amount of the claim as established and paid. That the form of the contract shall be uniform as near as may be; and all contracts and powers of attorney, shall be in the names of the first and in that of one or more of the second and third parties in behalf of all of them.

Sixth. That whenever it shall be found necessary, in order to secure a claim, to divide the fees herein referred to with another or other attorneys, then in all such cases, the amount so paid
247 shall be deducted from the portion of the fees apportioned to the parties of the second and third parts in article 7 of this

agreement. And it is understood that the said parties of the second and third parts shall have the right, in their discretion, to make such special arrangements as they may desire with attorneys controlling claims, provided that they shall not agree to pay more than their share in any case. But it is provided also that the party of the first part shall not have the right to make any such special arrangement except after communicating with and obtaining the consent of the parties of the second and third parts in each and every case, the purpose of this provision being to afford the parties of the second and third parts full opportunity of securing without any outside agency all claims covered by this agreement. And that the party of the first part shall pay Messrs. Shellabarger & Wilson and all other counsel employed by him to assist in the prosecution and collection of said claims.

Seventh. That all the fees, compensation, and commissions obtained by any of the parties hereto, arising out of any claims secured by them to be prosecuted under this agreement, shall be applied as follows:—

1. To repay each of the parties hereto any expense incurred in behalf of, or in respect to the said claims, but not to repay any part of the personal or general expenses of any of the parties, such as rent, advertising, stationary, employment of agents and attorneys.

2. That to avoid the care and expense of keeping detailed accounts of expenses in presenting and prosecuting these claims,
248 the party of the first part shall be allowed thirty dollars ($30.) in each case, not requiring more than three petitions. And in those cases which require more than three petitions six dollars ($6.) additional for each petition in excess of three to cover the printing of petitions, prayers for facts, brief, and the translating and copying of the Causten records for filing as evidence in the courts. But any official records or other evidence shall be charged at actual cost, the clerks' and bailiffs' fees shall be charged as per actual bill, as also the printing of evidence if that expense is not met by the Government.

And to the second and third parties there shall be allowed in each case seven dollars ($7.) to cover expenses of obtaining and certifying letters of administration and power of attorney, and of verifying petitions in each case not requiring more than three petitions; and in those cases requiring more than three petitions seventy-five cents additional shall be allowed in each case in excess of three. Should however, the said parties of the second and third parts be subjected to expenses in proving the right of the claimants as provided by section 3rd of this agreement, then in such cases in addition to the above fixed sum they shall be allowed such actual additional expenses as may be so incurred.

3. After the payment of such expenses, to divide the residue of said fees into four equal parts, of which one part shall go to each of the parties of the second and third parts and two to the party of the first part (subject of course, to the provisions of article sixth).

249 Eighth. That the parties hereto mutually agree to deal with no persons respecting the claims covered by this agreement, except in accordance with the letter and spirit of article sixth.

Witness the hands and seals of said parties.

——— ———. [SEAL.]
——— ———. [SEAL.]
——— ———. [SEAL.]
——— ———. [SEAL.]
——— ———. [SEAL.]
——— ———. [SEAL.]

And whereas, the said William E. Earle died on the 13th day of August, eighteen hundred and ninety-four

And whereas, differences have arisen between the said Henry M. Earle, administrator as aforesaid: party of the first part, and the parties of the second part, which are as follows:

(1st.) To what compensation, if any, the parties of the second part are entitled for services claimed to have been rendered by them after the death of the said William E. Earle in securing appropriations, out of the proportion of the fees to which William E. Earle would have been entitled had he lived, in cases where appropriations have been made since the death of the said Earle and which appropriations were secured after his death.

(2nd.) To what proportion of the fees to which William E. Earle would have been entitled had he lived and prosecuted the cases; in cases yet to be prosecuted or to be appropriated for, shall the party of the first part be entitled.

a. In cases where findings have been made by the court and which have been certified up to Congress.

250 *b.* Where findings have been made by the court, but which have been remanded for further proceedings.

c. In cases which were fully prepared by the said William E. Earle and are ready for argument.

d. In cases which were prepared by the said Earle only so far as the filing of the evidence.

e. In cases where only the petition has been filed.

And in this connection the arbitrators shall decide whether the party of the first part has the right to have some one associated with the parties of the second part in the further prosecution of pending cases, and in the event that they should decide that the party of the first part has this right, then the amount of compensation to be paid to such party shall be borne entirely by the estate of William E. Earle.

The arbitrators shall further decide how much of a certain fund, amounting to twenty-four hundred dollars deposited by the parties of the second part with the said William E. Earle for the purpose of meeting the cost of printing and translations, remain unexpended by him, and when the same is ascertained, the amount so remaining unexpended shall be paid over by the receivers to the parties of

the second part or some one by them authorized to receipt for the same; and there shall remain in the hands of the receivers the sum of eighteen hundred and fifty dollars to meet the same.

Now, this agreement witnesseth:

That all questions hereinbefore enumerated shall be submitted to Henry E. Davis, Esq., and A. S. Worthington, for determina-
251 tion: and their decision upon all questions of fact and law shall be final and conclusive upon all the parties to this agreement; and immediately upon the signing of this agreement, the suit now pending in the supreme court of the District of Columbia, on its equity side, in which Henry M. Earle, administrator, &c., is complainant, and John Stewart and others are defendants, shall be dismissed, and the leave of court having been first obtained all exhibits filed in the said cause, either by the complainant or the defendants, or any of them, shall be withdrawn.

The expenses of this reference shall be borne by the parties hereto in such proportion as the arbitrators deem equitable and just, to be paid out of the amounts awarded the parties respectively.

In testimony whereof we have hereunto set our hands and seals the day and date first above written.

HENRY M. EARLE, [SEAL.]
Sole Adm'r Est. of Wm. E. Earle, Deceased.

Test: JOHN C. GITTINGS,
(Witness to sig. of Earle.)

FRANK P. CLARK. [SEAL.]

JOHN E. SEMMES. [SEAL.]

Witness as to F. P. Clark & J. E. Semmes
E. P. HILL.
L. J. STEWART.
EDWARD JONES.
EDWARD JONES.

JOHN STEWART. [SEAL.]
DAVID STEWART. [SEAL.]
PHILIP BARTLEY WATTS, [SEAL.]
Committee of the Person and Estate of George Allison Brown, Who is the Sole Heir and Personal Representative of Robert Riddell Brown.

SAFE DEPOSIT AND TRUST CO. OF BALTO.,
Adm'r of Rob't Riddell Brown, Dec'd.,
By JNO. D. MARSHALL, 2 *V. P.*

Test: J. J. NELLIGAN, *Sec'y.* [SEAL.]

252 Record of equity cause No. 20409.

Bill.

Filed May 1, 1899.

In the Supreme Court of the District of Columbia, Holding an Equity Court for said District.

HENRY M. EARLE, Adm'r *c. t. a.* of William E. Earle, Complainant,

vs.

JOHN STEWART, FRANK P. CLARK, ROBERT Riddle Brown, David Stewart, John E. Semmes, Jeremiah M. Wilson, Thos. B. Chequiere, Adm'r; Jacob B. Sweitzer and David Stewart, Adm'rs; Wm. Hall Harris, Adm'r; Wm. Hall Harris, Adm'r; Esther S. Buchanan, Adm'r; Geo. H. Williams, Adm'r; Robert Carter Smith, Adm'r; Cumberland D. Hollins, Adm'r; Wm. Donnell, Adm'r; Geo. W. Brown, Adm'r; Robert Carter Smith, Adm'r; Esther S. Buchanan, Adm'r; Cumberland D. Hollins, Adm'r; Catherine M. Singleton, Adm'r; Geo. H. Williams, Adm'r; Chas. J. Bonaparte, Adm'r; David Stewart, Adm'r; John M. Carrere and David Stewart, Adm'rs; David M. Stewart, Adm'r; Jno. C. Tilgman, Adm'r; Rebecca R. Thompson and Elizabeth Y. Thompson, Adm'rs; William Donnell, Adm'r; Edw. C. Noyes, Adm'r; Cumberland D. Hollins, Adm'r; David Stewart, Adm'r; Chas. J. Bonaparte, Adm'r; David Stewart, Adm'r; Jno. W. Jenkins, Adm'r; David Stewart, Adm'r, and Robert Schriver, Adm'r, Defendants.

Equity. No. 20409.

To the honorable justices of the supreme court of the District of Columbia, holding a special term in equity:

Your petitioner, Henry M. Earle, administrator of William E. Earle, respectfully represents as follows:

1. That he is a citizen of the United States and a resident of the State and city of New York, and files this suit as hereinafter set forth.

253 2. That the defendant Jeremiah M. Wilson is a citizen of the United States, and a resident of the District of Columbia, and is sued as hereinafter mentioned; that the defendants John Stewart, Robert Riddle Brown, David Stewart, Frank P. Clark and John E. Semmes are citizens of the United States and residents of the State of Maryland, and are sued as hereinafter stated; that the defendants Thomas B. Chequiere, Jacob B. Sweitzer and David Stewart, William Hall Harris, Esther S. Buchanan, George H. Williams, Robert Carter Smith, Cumberland D. Hollins, William Donnell, George W. Brown, Catherine M. Singleton, Charles J. Bonaparte, John M. Carrere and David Stewart, John C. Tilgman, Rebecca Thompson and Elizabeth Y. Thompson, Edw. C. Noyes, John W. Jenkins and Robert Schriver, are citizens of the United States and residents of the State of Maryland, and are sued as administrators as hereinafter mentioned.

3. That on the — day of March, 1886, the defendants John Stewart, Robert Riddle Brown, David Stewart, Frank P. Clark and John E. Semmes, entered into a certain contract with William E. Earle of the city of Washington, D. C., for the purpose of engaging in and carrying on and prosecuting certain claims against the Government of the United States, known as the "French spoliation claims" and for the purpose of sharing the profits arising therefrom, a copy of which said contract signed by said several defendants is hereto attached and marked "Exhibit H. M. E. No. 1." That said contract is a partnership agreement on the part of the said Earle and the said defendants mentioned aforesaid, to prosecute and carry on certain claims of certain citizens of the State of Maryland. The said defendants mentioned aforesaid were, by said contract, to prosecute the said claims and make such contracts
254 with the claimants as they deemed best, and the said Earle was to represent the said partnership in the city of Washington, and to prosecute the said claims and use certain evidence which the said Earle had acquired for the purpose of prosecuting the said claims. And the said Earle had full power to employ counsel to assist him in his work and was to employ particularly the firm of Shellabarger and Wilson, the said defendant Jer-miah M. Wilson now being the surviving partner of that firm.

4. That after said contract was made as aforesaid, the said parties thereto proceeded to work in accordance therewith and the said defendants, parties to said contract, succeeded in controlling a large number of cases of the citizens of the State of Maryland and that said claims were filed in the Court of Claims of the United States, the said William E. Earle being the attorney of record therein. That prior to entering into said agreement, the said William E. Earle, under a decree of the supreme court of the District of Columbia, in the matter of the estate of James Causten, deceased, had obtained the exclusive custody, control and use — valuable records, evidence and proof relating to the said claims and known as the "Causten papers," the custody of which said papers was a material

inducement to the said contract mentioned aforesaid, were used in all these cases and were essential to the successful prosecution of the said claims, for the mutual benefit of all the parties to said contract, and the Causten representatives were to receive twenty per cent. of the net fee of the said William E. Earle. That the said William E. Earle, furthermore, in compliance with the terms of the sixth section of said contract, employed Messrs. Shellabarger and the defendant Wilson to aid him in the prosecution of the said claims;
255 that he also employed Curtis and Pickett, attorneys at law, who were associated in the office of the said William E. Earle, and who, at the present time, with your complainant, prosecute and carry on such of these claims as have not been fully paid and satisfied.

5. That by the terms of the said contract mentioned aforesaid, there was to be a division of fees derived from all of the cases, prosecuted under said contract. That the several parties were to receive certain amounts for costs in the several cases and that after the payment of such expenses as set out in the contract, the residue of the said fees was to be divided into four equal parts, one part of which was to go to the defendants John Stewart, Robert Riddle Brown, and David Stewart; another part of which was to go to Frank P. Clark and John E. Semmes, and the two remaining parts were to go to William E. Earle; that all of said contracts were, if possible, to be made with the claimants on the basis of one third of the amount reduced to judgments in the said Court of Claims.

6. That a large number of said claims were filed in the Court of Claims of the United States and adjudicated by said court, some of which claims have been fully paid and satisfied, others are to be paid by the appropriation hereinafter mentioned and others still remain in said court to be adjudicated; all of which said claims were duly prosecuted and carried on in accordance with the terms of the agreement mentioned aforesaid.

7. By act of Congress of March 3, 1899, there was appropriated a large sum of money to pay certain claims known as the "French spoliation claims," among which are the claims hereinafter
256 mentioned; that is to say all of the claims herein set out in a tabulated statement as follows:

No. of case.	Name of adm'r.	Amount.
228.	Thomas B. Chequiere	$3,849.16
2337.	Jacob B. Sweitzer and David Stewart	12,129.16
1087.	Wm. Hall Harris	20,334.16
1088.	Wm. Hall Harris	
381.	Esther S. Buchanan	11,660.21
4155.	Geo. H. Williams	3,464.
1003.	Robert Carter Smith	6,738.21
770.	Cumberland D. Hollins	4,922.
2011.	William Donnell	6,659.99
2008.	Geo. W. Brown	4,609.99

2008.	Robert Carter Smith	4,809.99
2011.	Esther H. Buchanan	25,056.00
2011.	Cumberland D. Hollins	7,600.
777.	Catherine M. Singleton	1,497.39
2293.	Geo. H. Williams	1,583.59
2293.	Chas. J. Bonaparte	1,583.59
4879.	David Stewart	5,723.18
1850.	Jno. M. Carrere and David Stewart	11,744.96
3093.	David M. Stewart	3,781.
383.	John C. Tilgman	6,024.96
784.	Rebecca R. Thompson and Elizabeth Y. Thompson	5,597.46
262.	Wm. Donnell	1,960.
262.	Edw. C. Noyes	980.
262.	Cumberland D. Hollins	1,500.
225.	David Stewart	980.
262.	Chas. J. Bonaparte	980.
262.	David Stewart	980.
262.	John W. Jenkins	980.
262.	David Stewart	490.
262.	Robert Schriver	490.

That in said above statement the parties entitled to receive the claimant's shares are the parties set out under the head of administrators and they are the defendants named in this suit, all of them to the best of complainant's knowledge and belief being residents of the State of Maryland.

8. That all of the said above named claims were reduced to judgments prior to the death of the said William E. Earle, which said death occurred on the 13th day of August, A. D. 1894 and
257 by and through his services and effort and those of the said several attorneys employed by him, in his behalf in pursuance to the terms of said agreement.

9. That soon after the death of William E. Earle, Mary Orr Earle, the then executrix of his estate, entered into a contract with your complainant relative to the continuance of the business of the French spoliation claims in the same manner as it had been conducted by the said William E. Earle; that thereupon your complainant entered into a contract with the said William T. S. Curtis and Theodore J. Pickett, whereby he, with them became the successors of the said William E. Earle in all matters pertaining to said claims, and including those which are the subject of the contract above mentioned between William E. Earle, Stewart and others, except that in the above mentioned cases, your complainant, the said Earle, with Curtis and Pickett, were associated with the firm of Shellabarger and Wilson, and its successor J. M. Wilson, who continued the prosecution and management of these claims in accordance with the contract mentioned aforesaid.

10. That the said Curtis, Pickett and Earle, Shellabarger and

Wilson, Jeremiah M. Wilson the successor of said firm of Shellabarger and Wilson, have frequently conferred with the said Clark and Semmes, defendants, parties to said contract, and who were informed and fully aware of the continuation of the performance of the said contract under the terms thereof; and that said work was proceeded with as far as the said parties to said contract were
258 concerned, in the same manner as the work had been carried on during the life of the said William E. Earle, without objection and with the concurrence of the parties to said contract.

11. That by the appropriation mentioned aforesaid, the said defendants claimants are entitled to about the sum of $160,500. and the said parties to said contract aforesaid by virtue of the terms of said contract are entitled to about the sum of $45,000. to be divided between them in accordance with the provisions of said contract.

12. That said sum of money mentioned aforesaid is to be paid by draft drawn in the name of the claimant and delivered to the attorney of record in said case as the same appears in the Court of Claims of the United States, and that said attorney, by virtue of his agreement with the several claimants, forwards to the said claimant said draft of the United States, there being attached thereto a draft to pay the fees due the attorneys under and by virtue of the contract with the said claimants, and accompanying said drafts there is a direction to the bank on which the same is drawn, that upon payment of the draft for fees, the draft of the United States be delivered to the claimant. That in the Court of Claims of the United States there appears of record in the cases set out in this bill, the name of William E. Earle, who has since died and the name of Jeremiah M. Wilson, the successor of the firm of Shellabarger and Wilson, the said Wilson being entitled to a certain per cent. of the said claims contingent on the payment thereof, by virtue of a contract made between Shellabarger and Wilson and William E. Earle, in compliance with the terms of the contract between the said Earle and the defendants parties to said contract.

13. That your complainant is informed and being informed,
259 believes, that the said parties, defendants to the contract, have entered a protest with the clerk of the Court of Claims against the entry of the appearance of the said Jeremiah M. Wilson, and they are about to enter their appearance in order to get possession of the drafts and defeat the rights of your complainant under the said contract; that they thereby are attempting to render null and void said agreement mentioned aforesaid and to have delivered to them the United States drafts in payment of the claims which are the subject of the said agreement, in this way procuring for themselves all the fees due and payable therefrom, greatly to the loss of your petitioner, who is further, nevertheless liable for certain costs and expenses pertaining to the prosecution of these claims and the remuneration of the said attorneys employed by said Earle under the terms of said agreement.

14. Your complainant avers that if the said defendants, parties

to said contract, accomplish what they desire to do, they will deprive your complainant of the share due the estate of the said William E. Earl, and that that estate may be subjected to the payment of the contingent amount due the Causten heirs and Jeremiah M. Wilson, and that said drafts, if delivered as desired by the said defendants parties to the said contract will be carried out of the jurisdiction of this honorable court and distributed to divers persons without any regard to the rights of your complainant, and that your complainant is without remedy other than in this honorable court.

Wherefore the premises considered your complainant prays:

260 1. That a writ of subpœna may be issued to the defendants John Stewart, Frank P. Clark, Robert Riddle Brown, David Stewart, John E. Semmes, Jeremiah M. Wilson, Thos. B. Chequiere, Jacob B. Sweitzer and David Stewart, William Hall Harris, Esther S. Buchanan, George H. Williams, Robert Carter Smith, Cumberland D. Hollins, William Donnell, Geo. W. Brown, Catherine M. Singleton, Chas. J. Bonaparte, John M. Carrere and David Stewart, David M. Stewart, John C. Tilgman, Rebecca R. Thompson, and Elizabeth Y. Thompson, Edward C. Noyes, Jno. W. Jenkins and Robert Schiver, commanding them to appear in this honorable court and answer the exigencies of this bill.

2. That the said defendants, John Stewart, Robert Riddle Brown, David Stewart, Frank P. Clark and John E. Semmes, and any of them, be and they are hereby enjoined from entering their appearance in the Court of Claims of the United States, in any of the cases hereinbefore referred to in this bill, or in any of the cases that are the subject of the agreement made between them and the said William E. Earle.

3. That the defendants John Stewart, Robert Riddle Brown, David Stewart, Frank P. Clark, and John E. Semmes, their agents or representatives, be enjoined from receiving any of the said drafts that are drawn by virtue of the said act of Congress mentioned aforesaid, to pay any of the several claims hereinbefore set forth; said claims being judgments of the Court of Claims in the said cases hereinbefore described.

4. That this honorable court appoint a receiver whose duty it shall be to receive the said drafts drawn on the Treasurer of the

261 United States to pay the claims of the several defendants hereinbefore mentioned, and that said receiver be expressly authorized to act in the place, and instead of the attorneys mentioned in the several contracts with the defendant claimants and that upon presentation of the several contracts, or a certified copy thereof, mentioned aforesaid, the said receiver shall have full power and authority to forward the said drafts to the claimants in the manner mentioned in this bill, and shall retain only the amount due of the fee in each case respectively.

5. That the said defendants, John Stewart, Robert Riddle Brown, David Stewart, Frank P. Clark, and John E. Semmes, discover and set forth each and every contract or agreement that they may have

with the claimant defendants, and such other papers as they may have as relate to the subject matter of this bill.

6. That after the settlement of the claims of the several claimants or after the deduction of the fees due the attorneys, this case may be referred to the auditor of the court to fully state the account between the parties to said contract, or to fully state the amount due any of the claimant defendants herein, should there be dispute as to that amount.

7. That your complainant may have such other and further relief as the nature of his case may require.

HENRY M. EARLE.

D. W. BAKER,
JNO. C. GITTINGS,
Solicitors for Complainant.

262 STATE OF NEW YORK, } ss:
State and County of New York, }

I, Henry M. Earle, being duly sworn, depose and say: That I am the administrator of the estate of the late William E. Earle, and that I have read the foregoing bill by me subscribed and know the contents thereof; that the facts therein stated of my own knowledge are true and that those stated on information and belief I believe to be true.

HENRY M. EARLE.

Subscribed and sworn to before me this 1st day of April, 1899.

HENRY C. QUINBY,
7, *Notary Public, New York County.*

STATE OF NEW YORK, } ss:
County of New York, }

I, William Sohmer, clerk of the county of New York, and also clerk of the supreme court for the said county, the same being a court of record, do hereby certify, that Henry C. Quinby, before whom the annexed deposition was taken, was, at the time of taking the same, a notary public of New York, dwelling in said [SEAL.] county, duly appointed and sworn and authorized to administer oaths to be used in any court in said State, and for general purposes; that I am well acquainted with the handwriting of said notary, and that his signature thereto is genuine, as I verily believe.

In testimony whereof, I have hereunto set my hand and affixed the seal of the said court and county, the 3 day of April, 1899.

(I. R. stamp)

WM. SOHMER, *Clerk.*

263 *Injunction, &c.*

Filed May 1, 1899.

In the Supreme Court of the District of Columbia, Holding an Equity Court for said District.

HENRY M. EARLE, Adm'r *c. t. a.* of William E. Earle, Complainant,
vs.
JOHN STEWART ET AL., Defendants.
} Equity. No. 20409.

Upon consideration of the bill filed in the above entitled cause, it is by the court, this 1st day of May, A. D. 1899, ordered, adjudged and decreed that the defendants—John Stewart, Frank P. Clark, Robert Riddle Brown, David Stewart, and John E. Semmes, be, and they are hereby restrained and enjoined from entering their appearance in the Court of Claims in any cases included in their contract with William E. Earle, deceased; and they are further enjoined from receiving any drafts or proper vouchers issued to pay certain judgments of the Court of Claims set out in said bill, to wit—judgments in cases numbered 228, 2337, 1087, 1088, 381, 4155, 1003, 770, 2011, 2008, 777, 2293, 4879, 1850, 3093, 383, 784, 262 and 225; and it is further ordered that said defendants and the defendant Jeremiah M. Wilson show cause on or before the 8th. day of May, A. D. 1899 why a receiver should not be appointed to receive said drafts, and act in the place and stead of the said attorneys mentioned in said bill aforesaid.

CHAS. C. COLE,
Asso. Justice.

264 *Answer of John E. Semmes et al.*

Filed May 11, 1899.

In the Supreme Court of the District of Columbia, Holding an Equity Court for said District.

HENRY M. EARLE, Adm. *c. t. a.* of Wm. E. Earle, Complainant,
vs.
JOHN STEWART ET AL., Defendant-.
} No. 20409.

To the honorable the judges of the said court:

The separate answer of John E. Semmes and Frank P. Clark respectfully shows:

1. Your respondents admit the allegations of the first clause of the said bill.

2. Your respondents admit the allegations of the second clause of the said bill so far as they apply to defendants Jeremiah M. Wilson, John Stewart, David Stewart, Frank P. Clark, John E. Semmes, Thomas B. Gheguiere, William Hall Harris, Esther S. Buchanan, Robert Carter Smith, Charles J. Bonaparte, Rebecca Thompson, Elizabeth Y. Thompson, Edward C. Noyes, John W. Jenkins and Robert Shriver, but your respondents allege that the following defendants named therein are deceased, Robert Riddle Brown, George H. Williams, Cumberland D. Hollins, William Donnell, George W. Brown, Catherine M. Singleton, John M. Carrere and John C. Tilghman.

3. Your respondents admit that they together with John and David Stewart and Robert Riddle Brown on or about the third day of March, 1886, entered into an agreement with William E. Earle,
265 but as they have not been able to see the alleged copy thereof filed with the bill of complaint they herewith file a correct copy marked J. E. S. and F. P. C. Exhibit 1, which they pray may be read as part of this answer and they also file a copy of a supplemental agreement between the same parties and relating to the same subject matter marked J. E. S. and F. P. C. Exhibit 2, and which they pray may be read as part of this answer. Your respondents deny that the said agreements in any way establish partnership relations between your respondents and the said William E. Earle, but allege that they are in the usual form of agreement between counsel who undertake to jointly prosecute claims for a common client and their only legal effect is to fix the terms of such common undertaking. Your respondents do not deny that the said Earle had full power to employ such assistant counsel as he might see fit, but your respondents expressly deny that the mention of the names of Messrs. Shellabarger and Wilson in the said agreements justifies any implication that your respondents had anything to do with their employment, the fact is that before the agreement of March 3rd, 1886 was entered into the said Earle stated to your respondents that he proposed employing Messrs. Shellabarger & Wilson to assist him in the argument of the main questions involved in the prosecution of the claims, and this reference to such employment in this agreement was to put at rest any question as to your respondents' liability for their fees, all of which fully appears in clause four of the supplemental agreement Exhibit J. E. S. and F. P. C. 2. William E. Earle subsequently said to your respondents that he had paid Messrs. Shellabarger & Wilson in full.

4. Your respondents admit that after the contract of March
266 third, 1886, was executed they "proceeded to work" in accordance therewith, but your respondents aver that a very large proportion of the claims to which the said agreement was intended to apply had been placed in their hands long before the date of the same, though many were entrusted to them after that date. Your respondents admit that the said William E. Earle under an order of the proper court had secured possession of the papers known as

the "Causten papers" and that the same were valuable in supplying testimony in proof of claims and that this was not only "a material inducement" but that it was the sole inducement to your respondents to enter into the said agreement, but your respondents do not admit the allegation that they "were used" *i. e.*, the "Causten papers" in all these cases and were essential to the successful prosecution of the said claims, but they distinctly deny the same and allege that very many of the said claims were established by documentary evidence furnished the said Earle by your respondents and their associates and especially the Baltimore, Maryland and Marine Insurance Company's papers which papers were in the possession of John E. Semmes and David Stewart, as receivers of said companies and were placed in the said Earle's possession by the said receivers, and although demand has been made for the return of the same, said demand has never been complied with.

Your respondents believe the statement to be true that said Earle was to pay the Causten estate 20 % of his net fees, but they deny that they are in any manner concerned therewith. They are advised,
267 however, that no money whatever was paid to the said Causten estate out of the fees collected by the said Earle, which fees he received out of the appropriation made in 1891, to pay certain findings of the Court of Claims; and they are further advised that, under the terms of the contract under which the said William E. Earle secured possession of the said papers, the right to the possession of the same was terminated by the death of the said Earle, and that neither the petitioner nor any of the parties named are in a position to assume the right to carry out or perform the obligations of the said Earle under his contract with Frank P. Clark, and others, by reason of the fact that they are not legally in possession of the said papers. In addition to the said reason, your petitioners assert that under the circumstances no other or different person can be substituted for the said William E. Earle to perform his contract with Frank P. Clark and others, and that under no circumstances can a receiver be appointed to carry out or discharge his duties.

Your respondents admit that the said William E. Earle employed Messrs. Curtis and Pickett to aid him, and know they rendered him most material service, but they deny that they were ever or are now concerned with their said employment, or that any contractual relations have ever existed between themselves and these gentlemen, and they further aver that they know nothing about any agreement that may have been made between these gentlemen and the said complainant, and that they are not concerned therewith; and your respondents distinctly deny that said complainant acting as administrator of William E. Earle or otherwise, has any interest whatever
268 in said agreements between these respondents and their associates and the said William E. Earle except to a claim for such sum or sums of money which the estate of William E. Earle would be entitled to as a *quantum meriut* earned by the said William E. Earle up to the date of his death, which amount your

respondents are not only willing but most desirous to pay, if ascertained by any fair means and upon receipt by them of the fee to be paid; that as a matter of fact, just prior to the service of notice of this suit, on the same day, one of your respondents, John E. Semmes, had attended a meeting at the office of Samuel Maddox, and had there presented a proposal written agreement, a copy of which is herewith filed and marked J. E. S. and F. P. C. Exhibit 3., by the terms of which agreement it was proposed that, when your respondents should collect the fees as agreed upon, they would pay 5% of the same, the amount agreed upon to be paid by William E. Earle to Messrs. Shellabarger and Wilson to Mr. Wilson, the surviving member of the firm, upon the approval of the estate of William E. Earle, and that the balance of the entire fee to which William E. Earle would have been entitled, if he had completed his contract, should be deposited in some trust company in the name of arbitrators, to be agreed upon by the Earle estate, and your petitioners, with the exception of the sum of $2000.00 which it was claimed by your petitioners, was the balance of cash actually advanced to the said William E. Earle for specific purposes and not so expended by him; and it was further agreed that the arbitrators should have the power to arbitrate all questions including the claim of $2000.00. One of the counsel who signed the petition in this case, had in his possession a copy of this proposition, and on
269 the same day after the said proposition had been declined, an argument was had in the Court of Claims on a motion to determine who should be made attorney of record in the cases there pending; that at the hearing of the said motion W. D. Baker participated in the argument, and that a proposition was made in open court, that, if the written agreement heretofore referred to was not satisfactory, your respondent would give a bond in double the amount of money claimed to be due the said William E. Earle, and those claiming under him; at the suggestion of the Hon. J. M. Wilson, the court allowed a period of forty-eight hours in order to enable the parties to settle their differences, which time the Hon. J. M. Wilson assured the court, would, in his opinion, bring about an amicable settlement; as your petitioners walked from the court room they were served with the subpœna in this case. The said D. W. Baker though taking part in this discussion did not see fit to disclose to the court or counsel that this suit was pending or that the sheriff was waiting outside the court-room to serve subpœnas of this court upon his associate and opposing counsel as soon as they might leave the room.

5. Your respondents admit that the allegations of this clause of the bill are substantially correct but they refer to the agreement (J. E. S. and F. P. C. Exhibit 1) for its precise terms, as modified by J. E. S. and F. P. C. Exh. 2.

6. Your respondents admit that a number but not a "large number" of said claims have been adjudicated, and that some have been

paid, and that others are to be paid under the appropriation
270 act of March 3rd, 1899, and that others remain still to be tried, and that so far as they were prosecuted by the said William E. Earle it was done in accordance with the agreements hereinbefore mentioned, but your respondents aver that, in every case where they have been appropriated and paid, the Treasury warrants were delivered either to one of your respondents or to William E. Earle and by him to one of your respondents.

7. Your respondents admit that the enumeration of awards as set forth in the 7th clause of the bill are correct except as to No. 1,003—Robert Carter Smith, this should be $6,738 21/100 instead of $56,738 21/100 as stated in the bill, and that the various administrators therein named are the parties entitled to receive the Treasury warrants when issued.

8. That the several claims were reduced to judgments by William E. Earle, your respondent knows nothing about the nature of the service rendered him by counsel whom he employed for that purpose.

9. Your respondents know nothing about the allegations in the 9th clause of the said bill and if the complainant deems them material to his case he is hereby called upon to fully establish them by proof, your respondents however deny, whether they be true or not, that they are at all concerned therein, they insist that the agreements between themselves and their associates and the said William E. Earle terminated at his death, and that his executrix acquired no rights thereunder, and that if she under-took to make any contracts with the complainant or any one else whereby she sought to confer any rights or powers touching any claims represented by your
271 respondents and their associates, except to collect any monies that might be ascertained to be due the estate of the said William E. Earle at the time of his death, such contracts are utterly null and void.

10. Your respondents utterly deny the allegations of the 10th clause of the said bill; so far from the same being true your respondents cannot recall a single interview with Messrs. Shellabarger & Wilson or either of them since the death of William E. Earle until the controversy about the right to be substituted as attorney of record began and though they and especially respondent Clark have had many interviews with W. T. S. Curtis and T. J. Pickett they have on all occasions dealt with them as attorneys having a common cause, never suspecting that they claimed the right to represent respondents' clients in any way, and every word spoken and every act done must have given them to understand that respondents treated the agreements with William E. Earle as terminated by his death and that they proposed taking the cases where Earle left them and prosecuting them to a finish; the statement that "Clark and Semmes, defendants, were informed and fully aware of the continuation of the performance of the said contract under the terms thereof; and that said work was proceeded with as far as the said parties to said con-

tract were concerned, in the same manner as the work had been carried on during the life of the said William E. Earle, without objection and with the concurrence of the parties to said contract" is untrue.

11. That the amounts stated in the 11th clause of the said bill as payable to the sundry administrators represented by your respondents is substantially true, but the amount coming to the estate
272 of Wm. E. Earle can only be ascertained by determining what is a fair *quantum meruit* for the services which he rendered up to the time of his death which must be diminished by so much of the $2200 advanced as was not expended for the purposes for which it was so advanced.

12. Your respondents deny the allegations of the 12th clause of the said bill, the practice is this; the Treasury warrant is handed to the attorney of record, *drawn to the order of the administrator*, and by the latter cashed and the amount disbursed under the order of the orphans' court of Baltimore city, and no fee can be paid out of the fund either to the complainant or to the respondents except by the order of that court. It is not true in the manner stated "that in the Court of Claims of the United States there appears of record in the cases set out in this bill, the name of William E. Earle, who has since died and the name of Jeremiah M. Wilson," the truth is this, every petition in every case is signed by William E. Earle and by both or one of the other of the respondents or their associates, as co-attorneys for the plaintiffs, and the name of Jeremiah M. Wilson only appears, when it appears at all (it does not appear in some cases) signed to a "brief" or a "statement of facts" or other pleading, your respondents do not deny that the said Wilson appeared as counsel in many of the cases, possibly in all of them, but they do state that where his name appears it is only as the associate of Earle by whom he was employed, all of this however better appears from one of the petitions which is filed herewith marked J. E. S. and F. P. C., Exhibit 4.

13. Your respondents indignantly deny the allegations of clause 13 of the said bill that "they are about to enter their appear-
273 ance" in the Court of Claims "in order to get possession of the drafts and defeat the rights of your complainant," they have filed their motion in that court to be substituted as "attorney of record" which is required by the rules of that court, and as is their right and duty to their clients to do, in order to obtain the so-called "next of kin certificates," which they take to the Treasury Department and from it obtain the warrant to pay the claim, which in every case is drawn to the order of the administrator, as has been stated in clause twelve, of this answer.

Your respondents further aver that in any case, it is necessary to have the power of attorney from the claimant in order to entitle the attorney of record to receive the warrant, and that, as already stated, these warrants are made payable to the claimant, and that the allowance of the fee and the payment of the same are made under the

direction of the orphans' court of Baltimore city, and that it would be a great injustice and hardship upon the claimants to tie up or interfere with the collection of the money due to them from the Government, by reason of any disagreement in the division of the fees, as set out, and that it would be a hardship to bring them into court, as is proposed to be done by these proceedings, it being perfectly apparent to the court that the estate of William E. Earle cannot suffer by reason of the collection of the fees by your respondents, they having agreed to protect the said estate by a satisfactory bond.

14. Your respondents deny the allegations of the fourteenth clause of said bill, and repeat as they have already stated, that they
274 are prepared to furnish a bond with the Fidelity and Deposit Company of Maryland, or some other equally responsible trust Co. as surety, which has an office in the city of Washington, to the amount of any sum, which the court may decide to be sufficient for the protection of the complainant, to make good to him or to any one claiming under him, any amount that he may be able to establish as due his estate by your respondents, or any of the defendants in this cause who are represented by them.

And your respondents move for an order dissolving the restraining order heretofore passed by this honorable court in this cause, and pray that the prayer for a receiver be rejected, and that the bill be dismissed.

FRANK P. CLARK.
JOHN E. SEMMES.

BALTIMORE CITY, }
State of Maryland. }

Personally appeared before me a notary public in and for the State of Maryland, John E. Semmes and Frank P. Clark, and made oath in due form under law, that the matters and things set forth in the foregoing answer are true to the best of their knowledge and belief.

Witness my hand and official seal on the sixth day of May, eighteen hundred and ninety-nine.

WM. H. JONES,
Notary Public.

[SEAL.]

275 *Answer of Def't J. M. Wilson.*

Filed May 12, 1899.

In the Supreme Court of the District of Columbia.

HENRY M. EARLE, Administrator, Complainant,
vs.
JOHN STEWART ET AL., Defendants.
} In Equity. No. 20409.

The defendant, Jeremiah M. Wilson, for answer to so much and such parts of the bill of complaint on the above entitled cause as he is advised it is material for him to make answer, unto, answering says:

1-2. He is willing to admit that the residences of the parties to this suit are as set forth in the first and second paragraphs of the bill.

3. He admits the execution of the contract between William E. Earle, the complainant's intestate, and the defendants John Stewart, Robert Riddle Brown, David Stewart, Frank P. Clark and John Semmes, for the prosecution of the "French spoliation claims," as set forth in the third paragraph, and believes "Exhibit H. M. E. No. 1," to be a correct copy of the said contract. He further admits that he is the surviving partner of the firm of Shellabarger and Wilson, which firm the said Earle was authorized to employ in the prosecution of the said claims, as alleged.

4. It is true, as alleged in the fourth paragraph of the bill, that the parties to the said contract, after its execution, proceeded
276 under it and succeeded in acquiring a large number of "French spoliation claims" from the State of Maryland, which claims were duly filed in the Court of Claims of the United States, the said William E. Earle appearing as attorney of record therein, and that prior to the execution of the said contract the said William E. Earle had obtained the exclusive custody, access to, and control of the "Causten papers" which were important to the successful prosecution of the said claims, and which, relying upon the said contract, the said Earle thereafter furnished and caused to be used in aid of the cases prosecuted under the said agreement as aforesaid, and for which the personal representatives of James Causten were to be compensated as averred in the fourth paragraph.

It is also true that the said Earle, in compliance with the terms of the said contract, employed Samuel Shellabarger and this defendant, who composed the firm of Shellabarger and Wilson, by a written contract in that behalf, a copy of which is hereto annexed and made a part hereof marked Exhibit 1, to aid in the prosecution of these claims, and he is informed and believes that the said

Earle employed Messrs. Curtiss and Pickett, attorneys at law in the prosecution of the said claims and who thenceforward continued in their prosecution. Said contract with Shellabarger and Wilson has been by them in all things faithfully kept and performed, and is still in full force.

5–6. He believes that the fifth paragraph of the bill correctly summarizes the provisions of the said contract in regard to fees, costs and expenses, and that a large number of the said claims
277 were adjudicated, some of which have been fully paid, others of which are to be paid by the appropriation act referred to in the bill, while still other claims remain to be adjudicated; all of which said claims were duly prosecuted in accordance with the terms of the said contract, as alleged in the sixth paragraph of the bill.

7–8. He admits that the claims of all the persons enumerated in the seventh paragraph of the bill were reduced to judgment prior to the death of the said William E. Earle, which occurred on the 13th day of August, 1894, that these judgments were obtained by and through the services and exertions of the said William E. Earle, and by the services and efforts of the said several attorneys associated with him in their prosecution, under the terms of the said contract, and that Congress by its act of March 3rd. 1889, made an appropriation for the payment of the said claims, as set forth in the seventh paragraph of the bill.

He admits that after the death of William E. Earle, the further prosecution of the French spoliation claims was arranged for by and between his executrix, the complainant and the said William T. S. Curtis and Theodore J. Pickett, and that this defendant's said firm of Shellabarger and Wilson, and that this defendant as its survivor, continued in the prosecution and management of the claims in accordance with the terms of their said contract; the labor of prosecuting and managing these claims was proceeded with by this defendant and the said attorneys, Curtis and Pickett, associated in their prosecution, in the same manner as it had been done during the
278 life of the said William E. Earle.

11–12. He believes it to be true that the aggregate amount of the appropriation for the claims enumerated in the bill is $160,500.00, and that the parties to the said contracts, are by virtue thereof, entitled to the sum of $45,000.00, approximately, for division among themselves in accordance with their provisions; that the said money is to be paid by drafts drawn in the name of the claimant and delivered to the attorney of record in the case, as the same appears in the Court of Claims of the United States, and that the usual course of collection is for the said attorney to forward the said draft to the said claimants respectively, with a draft attached for the payment of the fees dues to the attorneys, as set forth in the twelfth paragraph of the bill. He further admits that the late William E. Earle appeared as the attorney of record in the said claims in the Court of Claims; this defendant and his late partner,

appeared with the said Earle on the record, as attorneys in said cause and aided in the preparation and trial thereof.

13–14. He admits it to be true that the parties to the said contract with William E. Earle have entered a formal objection in the Court of Claims against the entry of the appearance of this defendant as the attorney of record in the said cases, and are seeking to be recognized by said Court of Claims as attorneys of record in said cases to the exclusion of this defendant, and he avers the fact to be, that if the said defendants do so enter their appearances, it will be
279 their first appearance in the Court of Claims, in the cases now in question, except that their names were signed to the original petition; all the professional labor in the said court having been performed by the said William E. Earle and this defendant and his said partner, assisted by the said Curtis and Pickett; and he also admits, that if the said defendants shall proceed with their said purpose, and succeed therein, they will thereby be enabled to get possession of the drafts to be issued in payment of the claims aforesaid, and to control the disposition of the moneys arising therefrom, and to deprive all the parties interested, other than themselves of such lien as they may be entitled to by reason of services rendered as attorneys in the prosecution of said claims.

This defendant admits that if the said drafts pass into the control of the said parties defendant, other than this respondent, the same and the moneys arising therefrom, will be removed from the jurisdiction of this court.

Further answering, this defendant says, that under and by virtue of the contract and agreement, entered into between the said William E. Earle, deceased, and the said firm of Shellabarger and Wilson, in said bill of complaint referred to, he, as surviving partner of said firm, is entitled to have, out of the moneys to be paid as aforesaid, the sum of about eight thousand dollars ($8,000.00).

JEREMIAH M. WILSON.

I, Jeremiah M. Wilson, on oath say that I have read the foregoing answer by me subscribed, and know the contents thereof; that the matters and things therein set forth upon my personal knowl-
280 edge are true, and that those set forth upon information and belief, I believe to be true.

JEREMIAH M. WILSON.

Subscribed and sworn to, before me, this 12th day of May, A. D. 1899.

J. R. YOUNG, *Clerk*,
By N. C. DOWNS,
Ass't Clerk.

EXHIBIT 1.

An agreement made this 4th day of May, 1886, between William E. Earle of the first part, and Shellabarger and Wilson of the second part, both parties of Washington, D. C., witnesseth:

That the said party of the first part hereby employs the said party of the second part as attorneys and counsel to aid in the prosecution in the Court of Claims, of the claims against the United States, being prosecuted under the act approved on the 20th day of January, 1885, and which claims are commonly known as French spoliation claims, a schedule of which claims in which said employment is hereby made, is hereunto attached and made a part of this contract, marked Schedule A, and such other claims as the original owners residing in the State of Maryland and the first party shall be interested in along with John and David Stewart, and Clark and Semmes.

Said employment is made upon the following terms:

281 That the said second party is to render in the prosecution of said claims, to the best of their ability, their proper and lawful professional services in the said court, and also, if need be, before any committee of either House of Congress, and are to consult, confer and advise with the party of the first part concerning the questions involved, and to aid in the preparation of the briefs in the cases, and the first party agrees to pay to the second party in compensation for said services a sum equal to five (5) per cent. of all that shall be collected and paid by the United States upon said several and respective claims named in the said schedule.

In witness whereof the said parties have hereunto set their hands and seals this 4th day of May, A. D. 1886.

(Signed) WILLIAM E. EARLE.
(Signed) SHELLABARGER & WILSON. [SEAL.]

(Here follows schedule of cases.)

282 *Petition of Thos. E. Waggaman.*

Filed June 2, 1899.

Supreme Court of the District of Columbia.

HENRY M. EARLE, Adm., &c., vs. JOHN STEWART ET AL. } Equity. No. 20409.

To the supreme court of the District of Columbia, holding an equity court for said District:

The petition of Thomas E. Waggaman, of the District of Columbia, respectfully represents.

1. That by decree duly passed by the supreme court of the District

of Columbia, holding a special term for orphans' court business he was appointed administrator *de bonis non*, with the will annexed of James H. Causten, deceased, and having qualified by giving the bond required, received letters as such.

2. The principal assets of said estate consisted of papers, valuable for use as evidence and in connection with the French spoliation claims, and by an order of said special term petitioner made a contract with William E. Earle of said District for the possession and use of said papers, a copy of which marked Exhibit A is annexed as a part hereof, the date whereof is June 12, 1885.

3. Under the terms of said contract, petitioner, as the representative of said Causten estate, has a large interest in the sum claimed by the complainant herein as administrator of said William E. Earle.

283 4. The contract referred to in the bill between said William E. Earle and the defendants John Stewart, *et al.*, of March 3, 1886, a copy whereof is filed as Complainant's Exhibit No. 1, refers to the custody and control of said papers by said William E. Earle and provides for their use as evidence in the cases referred to in said agreement, and petitioner is informed and believes and avers that the existence of said contract between him and said Earle was known, not only by record notice, but as a matter of fact, to all the parties to said contract of March 3, 1886.

5. Petitioner has not as yet received any payment under his contract, either from said Earle in his lifetime, or from said administrator, although said Earle received a large sum in fees, of which petitioner was entitled to the share provided for in said contract of June 12, 1885.

6. Petitioner is advised and avers that it is his right to become a party to this suit and to have the sum due him under said contract ascertained in this cause, and paid out of the fund due said William E. Earle's estate; that his intervention herein will prevent other suits, will preserve the fund intact until petitioner's rights are ascertained, and will enable the court, in the one cause, to settle all claims upon said fund.

Wherefore petitioner prays as follows:

1. That he may be made party defendant hereto, with leave to file an answer and cross bill, if so advised.

2. That the share of said Earle in said fund may be ordered to remain in the hands of receivers appointed or to be ap-
284 pointed in this cause, until the rights of petitioner therein shall be ascertained and decreed.

3. That upon the ascertainment of petitioner's interest as aforesaid, his share of said fund under his contract, may be paid to him.

4. That the complainant herein and the parties to said contract of March 3, 1886 may be restrained from receiving or disposing of any part of said Earle's share of said fund until petitioner's rights therein are ascertained and the money due him paid.

5. That petitioner may have such other relief as the case may require.

THOS. E. WAGGAMAN.

IRVING WILLIAMSON,
Sol'r. for Petitioner.

DISTRICT OF COLUMBIA, ss:

I, Thomas E. Waggaman do solemnly swear that I have heard read the foregoing petition by me subscribed, and know the contents thereof, and that the facts therein stated upon my personal knowledge are true, and those therein stated upon information and belief, I believe to be true.

THOS. E. WAGGAMAN.

Subscribed and sworn to before me this 1st day of June, 1899.

CHAS. S. DRURY,
[SEAL.] *Notary Public, D. C.*

285 *Order Appointing Receiver.*

Filed June 3, 1899.

In the Supreme Court of the District of Columbia.

HENRY M. EARLE, Administrator, etc., vs. JOHN STEWART ET AL. } Equity. No. 20409.

This cause coming on to be heard on the bill, answer and motion to dissolve the restraining order heretofore granted, and the further motion to grant the prayer of the bill, asking for receivers to be appointed to take charge of the certain drafts to be issued as mentioned in the said bill, and, after argument by the solicitors for the respective parties, it is by the court this 3d. day of June, 1899 adjudged, ordered and decreed, that the restraining order heretofore granted, restraining and enjoining, John Stewart, David Stewart, John E. Semmes and Frank P. Clark, from entering their appearances in the Court of Claims in any cases included in their contracts with William E. Earle, deceased, is hereby dissolved; it is further ordered and decreed that so much of the said restraining order as restrains and enjoins any of the defendants from receiving any drafts or warrants issued by the Treasury Department to pay the awards in cases Nos. 228, 2337, 1087, 1088, 381, 4155, 1003, 770, 2111, 2008, 2011, 777, 2293, 4879, 1850, 3093, 383, 784, 262 and 225, is continued in force.

It is further ordered, adjudged and decreed, that the defendants, Frank P. Clark and Jeremiah Wilson, be, and they are hereby ap-

pointed receivers of this court, with full power and authority to demand, receive and receipt for all drafts that may be issued
286 and moneys that may be paid by the United States in payment of appropriations made by the Congress of the United States, in the cases above mentioned, and to execute all receipts and acquittances that may be necessary for the purpose of procuring the delivery to them of such drafts, warrants or moneys; and with full power and authority to the said receivers upon the collection of the said moneys to pay to the respective claimants, without delay or further proceeding in, or further order of this court, the amount due to the said claimants on account of their several claims, after deducting therefrom such fees as may be properly due and payable.

And it is further ordered that said receivers act without bond and without compensation but to be allowed any legitimate expenses that may be incurred by them in the performance of their duties as receivers.

CHAS. C. COLE,
Asso. Justice.

Replication.

Filed July 12, 1899.

In the Supreme Court of the District of Columbia.

HENRY M. EARLE, Administrator *c. t. a.*,
vs.
JOHN STUART ET AL. } Equity. No. 20409.

The complainant hereby joins issue with the defendants on the answer filed by them.

D. W. BAKER,
JOHN C. GITTINGS,
Sol'rs for Complainant.

287 *Petition of Frank P. Clark.*

Filed October 16, 1899.

In the Supreme Court of the District of Columbia.

HENRY M. EARLE, Adm'r *c. t. a.*,
vs.
JOHN STEWART ET ALS. } In Equity. No. 20409.

To the honorable the judge of said court:

The petition of Frank P. Clark, John E. Semmes, John and David Stewart and the Safe Deposit and Trust Company of Baltimore, administrator of Robert Riddle Brown, respectfully shows:

1. That this suit has been instituted for the purpose of having ascertained and determined the rights of the parties thereto to a certain fund now in the hands of Jeremiah M. Wilson and Frank P. Clark,

who, by an order of this court, passed on the 3rd day of June 1899, were appointed in this cause receivers *pendente lite*.

2. That the said fund consists of fees paid over to the said receivers for the joint account of the complainant and your petitioners and in the following cases and for the amounts as follows:

On the claim of John Hillen's	estate.....	326.66
" " " " William Patterson's	"	4756.45
" " " " John Carrere's	"	3914.98
On the claim of William Van Wyck's	estate.....	2008.32
288 " " " " Joseph Young's	"	1865.82
" " " " Samuel Williams'	"	527.86
On the claim of John Hollins'	estate.....	4174.00
" " " " Cumberland Dugan's	"	500.00
" " " " Samuel Smith's	"	3782.73
" " " " John Holmes'	"	4043.05
" " " " Benj. Williams'	"	640.89
" " " " Wm. B. Buchanan's	"	12238.74
" " " " Jas. A. Buchanan's	"	1536.66
Total.....		$40316.16

3. That there has been paid under the order of court dated August 25th, 1899, to A. MacDonald McBlair the sum of seven hundred and twenty seven 75/100 dollars which is chargeable to your petitioners' share of the fund, leaving the amount due them nineteen thousand four hundred and thirty dollars and thirty three cents.

4. That the contention of the complainant is that he is entitled to the one-half of this impounded fund which contention is contested by your petitioners but as to the remaining half the bill concedes, (inasmuch as it lays claim to but one-half of the fund) that such remaining half belongs to your petitioners, no claim whatever being made against it by the complainant except for such costs as may eventually be awarded him should the result of the suit be adverse to your petitioners.

5. That your petitioners are ready, and do hereby offer, to give bond for the faithful payment of such costs, if any, as may hereafter be awarded against them and in such amount as your honor may fix.

289 Your petitioners therefore pray your honor that you will pass an order directing the receivers to pay to the petitioners out of the fund in their hands the sum of nineteen thousand four hundred and thirty-three 33/100 dollars.

And your petitioners will ever pray, &c.

FRANK P. CLARK,
DAVID STEWART,
JOHN E. SEMMES,
For the Firm of John Stewart, R. R. Brown, & David Stewart.

FRANK P. CLARK,
Solicitor for Petitioners.

STATE OF MARYLAND, } ss:
City of Baltimore, }

I, William H. Jones, a notary public, of the State of Maryland in and for the city of Baltimore do hereby certify that there appeared before me this thirteenth day of October, 1899, Frank P. Clark, one of the subscribers to the foregoing petition, and who is personally known to me, who made oath in due form of law that the matters and facts set forth in the foregoing petition are true to the best of his knowledge and belief.

In testimony whereof, I have hereunto set my hand and official seal the day and date aforesaid.

WM. H. JONES,
Notary Public.

[NOTARIAL SEAL.]

290 *Answer to Petition of Jno. Stewart.*

Filed November 1, 1899.

In the Supreme Court of the District of Columbia.

EARLE, Administrator, } Equity. No. 20409.
vs.
STEWART ET AL. }

To the honorable the judge of said court:

Your petitioner Henry M. Earle, administrator, in answer to the petition of Frank P. Clark, John E. Semmes and John and David Stewart and the Safe Deposit and Trust Company of Baltimore, administrator of Robert Riddell Brown, filed in this cause October 16th, 1899, respectfully states as follows:

1. He admits the allegations contained in paragraph 1.

2. In answer to paragraph 2, he states that he is not conversant with the amount now in the receiver's hands, but believes the amount stated by the petitioners to be correct.

3. He admits the allegations contained in paragraph 3.

4. He admits the allegations contained in paragraph 4 as being true.

5. He admits that the petitioners are willing to give bond but states that the defendants have no right, title or interest in the one-half claimed by him as administrator of the estate of William E. Earle. He further states owing to the amount involved that
291 the litigation will no doubt be very costly; there is a great deal of testimony to be taken, and this case may eventually go to the Supreme Court of the United States, and as he has been forced into litigation, and the whole fund being a partnership fund, as alleged in his bill of complaint, that an amount sufficient to fully

cover any costs which may accrue by reason of the present litigation should be retained from the one-half interest belonging to the petitioners and left in the hands of the receivers, and he should not be placed in a position of afterwards having to bring suit upon the bond.

Therefore your respondent prays that this court will pass an order herein which will protect the interest of all parties.

HENRY M. EARLE,
By JOHN C. GITTINGS, *Att'y.*

D. W. BAKER.
JOHN C. GITTINGS,
Sol'rs for Compl't.

John C. Gittings being duly sworn, deposes and says that he is one of the attorneys of Henry M. Earle the complainant that the said complainant is not now in the jurisdiction of this court and that he the said Gittings has read over the answer subscribed by him for the said Henry M. Earle and knows the contents thereof and the matters and things therein stated are true and those stated upon information and belief he believes to be true.

JOHN C. GITTINGS.

Subscribed and sworn to before me this first day of November, 1899.

JOHN R. SHIELDS,
[SEAL.] *Notary Public.*

292 *Order Dismissing Suit.*

Filed March 12, 1900.

In the Supreme Court of the District of Columbia.

HENRY M. EARLE, Administrator of Wm. E. Earle,
vs.
JOHN STEWART ET AL. } Equity. No. 20409

On consideration of the motion of the complainant and the consent of the defendant through their solicitors of record, it is by the court this 12th. day of March, 1900, ordered, adjudged and decreed, that the order made in this cause on the first day of November, 1899, directing the receivers, Jeremiah M. Wilson and Frank P. Clark, to pay over to Jeremiah M. Wilson, as surviving partner of the firm of Shellabarger and Wilson, the sum of six thousand three hundred and eighty-two dollars and seventy-one cents, and the order made on the sixth day of November 1899 directing the said receivers to pay over to Frank P. Clark, John E. Semmes, John and

David Stewart and the Safe Deposit and Trust Company of Baltimore, administrator of Robert Riddell Brown, the sum of nineteen thousand, four hundred and thirty dollars and thirty-three cents, be and they are, hereby ratified and confirmed; and it is further hereby ordered that the said receivers out of the remainder of the fund in their hands, pay over to the said Jeremiah M. Wilson, surviving partner of the firm of Shellabarger & Wilson the further sum of five hundred and seventy nine dollars and thirty-six cents, and to Frank P. Clark, John E. Semmes, John and David Stewart, and to the Safe Deposit and Trust Company, administrator of Robert Riddle Brown,
293 the further sum of one thousand nine hundred and thirty one dollars and twenty-two cents; and said receivers are further ordered to pay out of the balance remaining in their hands to Frank P. Clark and Henry M. Earle upon their joint receipt, the sum of six thousand, eight hundred dollars, and the remainder of the fund in their hands, they will pay to Henry M. Earle, administrator of William E. Earle, deceased; and it is further ordered that this suit be dismissed without prejudice to the rights of the parties thereto; and it is further ordered that the parties to the said suit and each of them may withdraw from the records such papers and exhibits as they may desire.

JOB BARNARD, *Justice.*

I consent:
I. WILLIAMSON,
Sol'r for Waggaman.
J. M. WILSON, *Party Def't,*
By A. A. HOEHLING, JR.

M'ch 27/1900.—Compl't's Ex. No. 1, and Exhibit J. E. S. & F. P. C. No. 2, withdrawn by J. C. Gittings, solicitor for compl't.

Order Modifying Former Decree.

Filed March 29, 1900.

In the Supreme Court of the District of Columbia.

HENRY M. EARLE, Administrator,
vs.
JOHN STEWART ET AL. } Equity. No. 20409.

Upon motion of the complainant and with consent of the
294 defendants it is by the court this 29th day of March, A. D. 1900. ordered that the order heretofore passed on the 12th day of March, 1900 in this cause be, and the same is hereby rescinded in so far as said order dismissed the said cause, and it is ordered that said cause stand for the purpose of allowing the re-

ceivers to collect the fees in certain cases mentioned in said bill, which fees are not yet paid, and to allow the receivers to file an account showing the disbursement of the money in accordance with the agreement of the parties and orders of court.

JOB BARNARD, *Justice.*

295 EXHIBIT "E." No. 2.

Filed June 10, 1902.

Having been duly authorized by all the parties in interest to adjust by way of arbitration (upon principles of fairness and justice without regard to the strict rules governing courts of law or equity) all questions now pending between and among the following parties, (sometimes hereinafter designated as "the said several parties first above named"), namely, first, the estate of William E. Earle; second, John Stewart, David Stewart, and the estate of Robert Riddell Brown; and, third, John E. Semmes and Frank P. Clark, respecting the relations, past, present and future, of the said parties to the prosecution of the French spoliation claims, so called, under certain agreements by and among them, and to declare and define the said relations and the said questions having by the said parties been duly and finally submitted to us for such arbitration, we, Augustus S. Worthington and Henry E. Davis, having heard the said parties and fully considered the premises, adjudge and award as follows:

1. The estate of William E. Earle, so long as it shall continue to have the custody and control of the Causten papers, so called, relating to and bearing upon the subject of said claims, is entitled and required to participate in the prosecution to payment and collection of those of the said claims in which the said Earle, John Stewart, David Stewart, Brown, Semmes and Clark were jointly interested at the time of the death of the said Earle, and also of such claims in which the said several parties first above named shall or may hereafter become jointly interested in accordance with the original
296 contemplation and agreement of the said Earle, Stewarts, Brown, Semmes and Clark, in the premises, and in that behalf the estate of the said Earle is entitled and required to employ and compensate competent counsel subject, however, to the approval by the others of the said several parties first above named of the naming of such counsel, to the end that the prosecution of the said claims may be proceeded with harmoniously and agreeably by all concerned.

It shall be the duty of the counsel so nominated and approved to render continuous and efficient service in the preparation and argument of the cases and in the collection of the amounts awarded subject to the supervision in the following paragraph given to said Clark and Semmes. If there should be on the part of the counsel so nominated and approved a clear failure to perform the duties so

imposed upon them, said Clark and Semmes shall thereupon have the right to require the substitution of other counsel from time to time in the same manner.

2. In view of the changed relations to said claims of the parties aforesaid consequent upon the death of the said Earle and the obligations of the said Semmes and Clark to the claimants in interest under the agreements and powers of attorney of said claimants, the said Semmes and Clark are, and since the death of the said Earle, have been, entitled to participate in the charge, control and prosecution of the said claims originally contemplated and provided to be undertaken, exercised and performed by the said Earle, and in case of any difference of opinion as to questions of procedure and
297 policy in respect to the prosecution of the said claims or any of them, to have the deciding voice.

3. Said Semmes and Clark in several classes of said claims, in view of the labors performed or to be performed by them subsequent to the death of said Earle, are and will be entitled to receive a proportion of the fees originally contemplated and provided to be received by the said Earle, as follows:—

a. Cases in which at the time of the death of said Earle no steps had been taken except filing the petition or petitions, and cases hereafter filed, fifteen (15) per centum.

b. Cases which were prepared by said Earle only so far as the filing of the evidence, ten (10) per centum.

c. Cases in which statements or requests for findings of fact were filed by said Earle during his lifetime and at the time of his death were ready for argument on behalf of the claimants, but which have not yet been argued, seven and one-half (7½) per centum.

d. Cases in which since the death of said Earle findings have been made by the Court of Claims, but which have been remanded for further proceedings, five (5) per centum.

e. In all other cases appropriation for the payment of which had not been made before the death of said Earle (including the cases in which the only service rendered since the death of said Earle was in obtaining an appropriation from Congress), two and one-half (2½) per centum, and in addition thereto the sum of four hundred ($400.00) dollars.

298 Where evidence filed or work done in one or some of several cases growing out of the loss of any vessel shall enure to the benefit of other cases relating to the same vessel such evidence shall be considered to have been filed or such work to have been done in such other cases also.

4. The said several first above named parties shall determine among themselves which of said claims fall within the respective categories mentioned in the preceding paragraph within twenty days from the date hereof, and in case of their failure to agree within that time, their differences in the premises shall within ten days thereafter be submitted to the undersigned, who will make proper

determination thereof, which, when made, shall be deemed and taken as a part of this finding and award.

5. Except as herein and hereby adjudged to be reduced, the amount or amounts originally contemplated and provided to be received by the said Earle by way of fees, shall be paid to his estate.

6. The said Semmes and Clark are entitled to be paid out of the moneys now in the hands of the receivers mentioned in the submission to arbitration, the sum of eighteen hundred ($1,800.00) dollars, in satisfaction of their claim for expenses.

7. In the absence of further agreement by and among the said several parties first above named or any of them, none of the said parties shall be entitled to any compensation for extra or additional labor or service in the premises, it being the meaning and intent of this adjudication and award that all the said several parties
299 shall co-operate in all the labor and service to be done and rendered in the premises upon the terms as to compensation herein and hereby adjudged and provided.

8. The necessary expenses of preparing the cases in the Court of Claims such as printing, making translations, and obtaining copies of papers, shall be paid one-half by the estate of said Earle and the other half by the remaining parties.

9. All matters in respect to the relations of the said several parties first above named in the premises, not herein and hereby considered and adjudged, shall be adjusted in accordance with existing agreements by and among the said several parties.

10. The costs of the arbitration, in the premises, namely, one thousand ($1,000.00) dollars, shall be paid to the undersigned, one-half by the estate of William E. Earle and one-half by the others of the said several parties first above-named.

Signed (in duplicate) at the city of Washington, in the District of Columbia, this 31st day of January, A. D., 1901.

AUGUSTUS S. WORTHINGTON.
HENRY E. DAVIS.

300 EXHIBIT W. T. S. C.

Filed October 23, 1901.

(Copy.)

Duplicate.

Whereas Wm. E. Earle, has engaged and employed Wm. T. S. Curtis to assist him, the said Earle, in the preparation of such claims, known as French spoliations for trial in the Court of Claims, which have or may hereafter be placed in his hands for prosecution, and whereas the said Curtis has acted and assisted and does hereby agree to act and assist in the preparation of said claims as above set forth

until otherwise agreed therefore this memorandum witnesseth that the said Earle stipulates and agrees to compensate the said Curtis for his services to be performed in the premises until otherwise agreed as follows: at the rate of fifty dollars ($50) per month in cash payable on the fifteenth day of each month and a further and additional payment at rate of fifty dollars per month beginning from the fifteenth day of November 1885, the said additional payment of fifty dollars over and above the cash payment of fifty dollars to be paid to the said Curtis by the said Earle out of the first fees received by said Earle on account of said French spoliation cases in which he is or may hereafter be employed as attorney making the entire compensation payable to said Curtis one hundred dollars per month.

Witness our hands and seals this fifth day of January 1886.

(Signed) WM. E. EARLE. [SEAL.]
(Signed) WM. T. S. CURTIS. [SEAL.]

True copy
WM. T. S. CURTIS.

301 EXHIBIT "Y."

Filed January 10, 1902.

Law office of Jeffries & Earle, counsellors at law, 1417 G St., N. W.

WASHINGTON, D. C., *May* 1, 1891.

DEAR MISS YOUNG: When you did me the honor to call with your cousin Miss Shriver I was obliged to hurry off to court, and regretted much to leave so hastily.

It is very evident that your cousin has some entirely erroneous opinions in regard to this business, and I could not but be amused at the idea of your esteemed grandfather having spent two or three fortunes in the prosecution of these claims. Knowing the whole of the inside facts of his business, the impression is so wholly mistaken that I cannot but be amused.

This, however, has nothing to do with the business in hand. We have a contract together in which we are mutually interested and in which I have been struggling for six years to carry out on my part and intend to do it to the end. I have advanced a great deal of money as well as labor for the prosecution of these claims, and the cash advanced will be the subject of an exact accounting before the court, and I have the vouchers as well as the account to show where it has been expended. The subject of my letter to you was one of policy entirely, and I think as a matter of self-interest it is a matter of candid consideration in virtue of our mutual interests.

I am very sorry that there should be any necessity of
302 discussing a matter which lies so plainly in the right as this does, but under the order of the court I am authorized to employ attorneys to assist me. There is no question in my mind that the parties whom I employed as attorneys in this work came legally under this provision, and if they did not they certainly ought to, and it would be only right that the court should so construe it. I am so convinced of this that if the orphans' court were to decide against me I should feel bound, in vindication of my conduct, to have the matter passed upon by the higher courts. It is not really any favor that I am asking in this matter, and I do not want it to be supposed for a moment that I am asking a favor or that I am going outside of my agreement. The court in giving its oral judgment, as you no doubt recollect, expressly said that this matter was to be managed just as a partnership between myself and the estate of Mr. Causten, one contributing one element and the other another to the business. At the same time, as a matter of course, the opponents of these claims will not hesitate to make use of the fact, that I have expended money, and that other claimants have expended money, to secure this appropriation, and, whilst everybody knows that these things are necessarily done, it will give some force to their objection that the fact appeared in court in the settlement of my accounts. But if I must do this I must, and, whilst I regret it, I cannot help it.

I am getting some of the drafts through, and am also getting a
303 good many certificates from the court, a number of which are now going their way through the Treasury. This matter involves a great deal of labor and takes some time. I hope to get enough claims through and my fees on them in the next four or five weeks to have a settlement. This appropriation, however, is only the entering wedge, and the result of it is sort of dubious. It sets a precedent for the others, however.

The expenses of prosecuting the claims up to this time have of course been very heavy, and the delay in making the appropriation has accumulated other considerable expenses such as will not have to be incurred again. About all that I will get out of this matter will be to get back some of the cash which I have outlaid in meeting expenses in prosecuting the claims, the enormous printing, arranging the testimony, etc.

We have about $200,000 of claims reported to Congress which are not included in the appropriation bill, and about as much more in court which have been allowed us, but which have not been reported to Congress, that I have been struggling against making this first appropriation bill too large.

Very truly yours, WM. E. EARLE.

Miss Young, 3401 N street, city.

304 EXHIBIT "Y."

Filed January 10, 1902.

Jeffries & Earle, counsellors at law, 1417 G St., N. W., Washington, D. C.

(Dictated)

WASHINGTON, *September* 19, 1891.

DEAR MISS YOUNG: I beg to again call your attention to the matter of the special congressional expenses in relation to the passage of the appropriation for our claims. I think you will remember that before the bill passed you fully agreed with me as to the necessity of this matter and also of its being arranged without being presented in my accounts to the court. If so presented, of course it will have a tendency to furnish material with which to fight us in the hands of some of those who want to defeat us in any event and would also tend to encourage lobbyists to blackmail us or defeat us in getting future appropriations.

I remember the remark that Miss Shriver made in my office in presence of your sister—that I was bound to incur these expenses myself. In that she is wholly and entirely mistaken, as you will see by obtaining from the clerk of the court a copy of the court's order, as it authorizes me to employ assistants, etc. This was a necessary, legitimate, and proper expense, and it has to be paid just as the other expenses before there can be any settlement in this matter.

I am very anxious that all this business shall be pleasantly arranged. I shall hope to hear from you soon upon this subject and if possible by my return from New York, where I shall spend next week taking testimony in five important cases.

Very truly yours, WM. E. EARLE.

305 *Contract.*

Filed November 13, 1902.

Whereas heretofore William E. Earle was retained by certain persons corporations and bodies to act for and to represent them as attorney or counsellor before the U. S. Court of Claims, committees of Congress and executive departments in that class of cases commonly known and designated as French spoliation claims and was also retained as associate counsel or otherwise, by certain other attorneys who represent certain of said French spoliation claims, and whereas the said William E. Earle departed this life on the 13th day of August, 1894, after having executed a certain last will and testament, which said last will and testament has been duly admitted to probate in the orphans' court of the District of Columbia, and whereas

Mary Orr Earle has duly qualified as the executrix of the said last will and testament of said William E. Earle, and whereas the said Mary Orr Earle, as such executrix as well as on her own behalf, has duly executed a certain contract dated the twenty-third day of November, 1894, with Henry M. Earle, attorney at law, of Washington, D. C. whereby the said Henry M. Earle, has been and is fully authorized and empowered to continue the prosecution, conduct and collection of such of said French spoliation claims wherein the said William E. Earle was retained or to continue the prosecution, conduct and collection of the interest of said William E. Earle or the interest of his estate therein, with full authority to retain and associate other attorneys with himself in and about the prosecution, conduct and collection of said claims or the interest therein of
306 said William E. Earle or the interest of his said estate, and whereas the death of said William E. Earle renders it necessary that the services rendered by and contracted to be rendered by the said William E. Earle in and about the prosecution, conduct and collection of said French spoliation claims shall be continued and performed by others, and whereas William T. S. Curtis and Theodore J. Pickett, attorneys at law, both of Washington, D. C. have for years past been associated with the said William E. Earle and engaged by and with him in the preparation and trial of said French spoliation claims and by reason thereof are familiar with the status of said claims and possess special knowledge advantageous in their prosecution, and whereas it is the desire of the heirs and legal representatives of the estate of said William E. Earle that the prosecution conduct and collection of said claims and the interest of said William E. Earle or the interest of his estate therein be continued before the said court, committees of Congress and executive departments and that the services contracted for, rendered and to be rendered by said William E. Earle be fully, completely and finally rendered and performed.

Now, therefore, this agreement this day entered into by and between Henry M. Earle, attorney at law of Washington, D. C., acting by virtue of the power and authority conferred upon him by the said Mary Orr Earle in the hereinbefore mentioned contract dated the twenty-third day of November 1894, party of the first part and said William T. S. Curtis and Theodore J. Pickett, parties of the second part.

307 Witnesseth: That for and in consideration of one dollar and other good and valuable considerations, the receipt whereof is hereby acknowledged to have been received, each from the other, it is agreed as follows:

That for and in consideration of the foregoing the said Henry M. Earle acting by virtue of the authority conferred upon him by the above mentioned contract of the twenty-third day of November, 1894, by and between himself and said Mary Orr Earle, as party of the first part and said William T. S. Curtis and Theodore J. Pickett parties of the second part, hereby stipulate and agree to continue the

prosecution conduct and collection of the said French spoliation claims and the interest of said William E. Earle or the interest of his estate therein, under the style of "successors to William E. Earle" upon the following terms and conditions to wit:—

First. That the said William T. S. Curtis and Theodore J. Pickett parties of the second part for and in consideration of the agreement, promises and undertaking of the said Henry M. Earle, party of the first part as herein set forth, hereby agree to act to the best of their abilities as attorneys and counsellors in the prosecution, conduct, trial, preparation and collection of the aforesaid French spoliation claims and the interest therein of the said William E. Earle or of his estate before the said Court of Claims, committees of Congress and the executive departments and to attend to the necessary correspondence connected with the prosecution, conduct, trial, preparation and collection of said claims or the interest of said William E.
Earle, or the interest of his estate therein and as such at-
308 torneys to appear before the said Court of Claims in the trial
of said claims and also before the proper committees of Congress, should this latter be necessary, or before the executive departments, and to advocate before the said committees of Congress should the same be necessary, that the necessary appropriations be made by Congress to carry out the findings of the Court of Claims in such of said cases or claims wherein said William E. Earle was retained or employed and in which he had an interest and in which his estate now has an interest, and in consideration of said services rendered and to be rendered by the parties of the second part, the said party of the first part, acting by virtue of the aforementioned contract dated the twenty-third day of November, 1894, by and between himself and the said Mary Orr Earle and being thereunto duly authorized by the said Mary Orr Earle as executrix as aforesaid as well as on her own behalf, hereby stipulates, promises and agrees with said parties of the second part that they the said parties of the second part shall continue the prosecution, conduct, trial, preparation and collection of said French spoliation claims and the interest therein of said William E. Earle or his estate with such assistance as the said Henry E. Earle shall render before the said court, committees of Congress and executive departments, rendering unto the aforesaid persons, corporations, bodies and attorneys, who have heretofore retained the said William E. Earle, like services as the said William E. Earle had contracted to render, and that they the said parties of the second part for such services are to receive and be paid as compensation therefor, thirty per centum of the net fee or fees that
would be payable to the said William E. Earle were he alive
309 or to his estate not that he is dead, in such of said claims as
have, prior to the date hereof, been reported by the Court of Claims to either house of Congress for an appropriation, when the same became due and are paid either under the various contracts heretofore made by said William E. Earle with the hereinbefore mentioned persons, corporations, bodies and attorneys interested in

said claims, or otherwise, said thirty per centum to be equally divided between said William T. S. Curtis and Theodore J. Pickett so that the said Curtis and the said Pickett shall each receive respectively fifteen (15%) per centum of the said net fee or fees of the said William E. Earle or which otherwise would be payable to him were he alive or to his estate now that he is dead.

Second. That the said parties of the second part further agree to render the same or like services as set forth in the first preceding section hereof (marked first) in such of said claims wherein the said William E. Earle was retained or employed as aforesaid and which have not, prior to the date hereof, been reported to either house of Congress by the Court of Claims for an appropriation and also to the best of their ability to take such action or steps as may be necessary to complete the various cases or claims or to prepare the same for trial and to try the same in the Court of Claims for which services they the said parties of the second part are to receive and be paid, at like time and under the same circumstances as set forth in the first preceding section hereof (marked first), fifty per centum of the net fee or fees that would otherwise be payable to the said William E. Earle were he alive or to his estate now that he is dead,
said fifty per centum to be equally divided between said
310 parties of the second part so that the said Curtis and the said Pickett shall each receive twenty-five (25%) per centum of the said net fee or fees of the said William E. Earle and which otherwise would be payable to him were he alive or to his estate now that he is dead.

Third. It is further stipulated and agreed by and between the parties to this agreement that the said party of the first part is to bear and advance all necessary office expenses, such as rent, postage, printing, stationery, translating, clerk hire, etc., up to and including the 31st day of March, 1895, and that the same are not to exceed the sum of six hundred dollars in the aggregate prior to said last mentioned date, after which time the said expenses as aforesaid to accrue after said last mentioned date are to be borne as follows, to wit: by the party of the first part one half thereof; by the parties of the second part one-half thereof, that is to say the said Curtis is to pay one-fourth and the said Pickett one-fourth of said expenses.

Fourth. It is further agreed by and between the first and second parties hereto that in case it should be deemed advisable by them to employ special counsel to represent or advocate the said claims before Congress or any committee thereof that the expenses attending the same shall be borne in the same manner or proportion as the fee or fees are to be divided; that is to say that in case of any employment to secure an appropriation for such cases as have been reported to either house of Congress prior to the date hereof the said party of the first part is to pay seventy per centum of the
expenses thereof and the said parties of the second part
311 are each to pay fifteen per centum of the expenses thereof. In all such claims that may be reported to either House of

Congress after the date hereof and be appropriated for and paid such expense of special counsel, if any be retained or employed shall be borne in the same manner or proportion as the fees or fee are to be divided in such cases, to wit: the said party of the first part is to pay one half thereof and the said parties of the second part are each to pay one-fourth thereof. It is further stipulated and agreed that no such special counsel shall be engaged except by agreement in writing signed by both the first and second parties hereto, but the said party of the first part hereby agrees and consents that the said parties of the second part shall have full authority to carry out any agreement that the said William E. Earle has heretofore made as to employment of special counsel, the expense of which is to be met as hereinbefore set forth, and whereas the said William E. Earle in his lifetime secured from certain persons interested in French spoliation claims, contracts for money to be expended in the employment of special counsel it is hereby agreed by and between the first and second parties hereto that the sum or sums contracted to be paid and which may be received on said contracts or on any renewal or renewals thereof shall be expended in the payment of such special counsel before either of said first or second parties hereto shall be called upon to contribute for that purpose.

Fifth. It is further agreed by and between the first and second parties hereto that nothing herein set forth shall in any man-
312 ner whatsoever effect, abrogate, change or nullify any written agreement, contract or undertaking or any part thereof, heretofore made and entered into by and between the said William E. Earle and said Theodore J. Pickett.

Sixth. It is further agreed by and between the parties hereto that when drafts are drawn on clients for fees the same shall be drawn in the joint names of the first and second parties hereto and all checks or drafts for fees shall be payable to the joint order of the first and second parties hereto and all money paid for fees shall be deposited in the West End national bank to the joint account of said first and second parties hereto.

In witness whereof we have hereunto set our hands and seals this twenty-third day of November, 1894.

HENRY M. EARLE, [SEAL.]
Party of the First Part.
WM. T. S. CURTIS, [SEAL.]
THEODORE J. PICKETT, [SEAL.]
Parties of the Second Part.

Ratified and confirmed this twenty-third day of November A. D. 1894.

MARY ORR EARLE, *Executrix.*

313 *Complainant's Exceptions to Auditor's Report.*

Filed December 5, 1902.

In the Supreme Court of the District of Columbia.

THOMAS E. WAGGAMAN, Administrator, &c., *vs.* HENRY M. EARLE, Administrator. } Equity. No. 21962.

Exceptions by Thomas E. Waggaman, administrator, &c., the above named complainant, to the report of James G. Payne, Esq., auditor, filed herein November 13, 1902.

Said complainant excepts to said report and Schedule A thereunto annexed, and for ground of such exceptions shows as follows:

1. Because the auditor in and by his said report and Schedule A thereunto annexed, allows the defendant credit for $3448.17 for "office rent from August 1, 1885, to August 1, 1893," alleged to have been paid by William E. Earle; whereas said auditor on the evidence before him should have found and reported that said William E. Earle was at the time engaged in the general practice of the law, that he maintained no separate office for the prosecution of French spoliation cases, and should have disallowed said claim.

2. Because the auditor in and by his said report has allowed the defendant credit for $18,332.15 for "other office expenses to July 15, 1893," alleged to have been paid by William E. Earle in
314 the prosecution of French spoliation claims; whereas on the evidence before him the auditor should have disallowed said claim.

3. Because the auditor in and by his said report has allowed to the defendant the sum of $1993.39 for "office expenses from said date to November 1, 1900," alleged to have been paid by the defendant in the prosecution of French spoliation claims; whereas said auditor on the evidence before him should have disallowed said claim.

4. Because the auditor in and by said report and said Schedule A thereunto annexed allowed the defendant, Henry M. Earle, credit for $6,150. alleged to have been paid William T. S. Curtis by the defendant's intestate for clerical services in the prosecution of French spoliation claims; whereas said auditor on the evidence before him should have found and reported that the estate of William E. Earle was not entitled to credit for said sum as against the complainant herein.

5. Because the auditor in and by said report and said Schedule A allows the defendant credit for $10,400. alleged to have been paid T. J. Pickett by the defendant's intestate for clerical services in the

prosecution of French spoliation claims; whereas said auditor on the evidence before him should have found and reported that the estate of William E. Earle was not entitled to credit for said sum as against the complainant.

6. Because said auditor in and by his said report has allowed the defendant credit for $2,000. claimed to have been paid by William E. Earle to Omer D. Conger & Son for "legal services before
315 committees," of Congress in regard to French spoliation claims. Whereas on the evidence before him said auditor should have refused to allow the defendant credit for said sum (*a*) because there was no sufficient evidence before him that said sum was actually paid by William E. Earle, and (*b*) because even if paid it was for what is commonly known as "lobby service," and was not contemplated by the agreement between the complainant and William E. Earle, referred to in these proceedings, for the use of the "Causten papers." (*c*) Because said payment, if made by said William E. Earle, is not a proper charge, under the law, against this complainant.

7. Because the auditor in and by his said report and Schedule A thereunto annexed allows the defendant credit for $2500. claimed to have been paid by William E. Earle to Philip B. Thompson for services before congressional committees in procuring appropriations to pay French spoliation claims. Whereas said auditor, on the evidence before him, should have disallowed said claim. (*a*) Because there was no sufficient evidence of the payment of said sum by the intestate to said Thompson. (*b*) Because even if paid, said disbursement was for what are known as "lobby services," constituting an expenditure not contemplated by the agreement between the complainant and defendant's intestate referred to in these proceedings, for the use of said "Causten papers." (*c*) Because said payment, if made by said William E. Earle, is not a proper charge under the law against this complainant.

316 8. Because the auditor in and by his said report and Schedule A annexed thereto allows the defendant credit for $2000. alleged to have been paid by William E. Earle to Dudley & Michener for services before committees of Congress in procuring appropriations to pay French spoliation claims. Whereas, on the evidence before him, the auditor should have found and reported that said sum was for what are commonly called "lobby services" and have disallowed the same, for the reasons stated and set forth in paragraphs 6 and 7 of these exceptions.

9. Because the auditor in and by said report and said Schedule A allows the defendant credit for $700. alleged to have been paid by the defendant's intestate to one L. B. Clarke. Whereas, on the evidence before him, said auditor should have found and reported that said sum, if paid by said William E. Earle, was for "lobby services" in procuring legislation by Congress to pay French spoliation claims, and that the defendant was not entitled to credit for the same, such expenditure being illegal and not contemplated by the agreement

referred to in the 6th paragraph of these exceptions, and not properly chargeable against the complainant, for the reasons set forth in paragraphs 6 and 7 of these exceptions.

WM. J. MILLER,
M. J. COLBERT,
S. T. THOMAS,
IRVING WILLIAMSON,
Sol'rs for Compl'ts.

317 *Defendant's Exceptions to Auditor's Report.*

Filed December 10, 1902.

In the Supreme Court of the District of Columbia.

THOMAS E. WAGGAMAN, Adm'r of James H. Causten, Deceased, Complainant,
vs.
HENRY M. EARLE, Adm'r of Wm. E. Earle, Deceased, Defendant.
} Equity. No. 21952.

Now comes the defendant, Henry M. Earle, adm'r of Wm. E. Earle, deceased, and files the following exceptions to the report of the auditor of this court filed in the above entitled cause on Nov. 13, 1902.

First exception.

That the auditor has stated on pages 6 and 7 of his report,

"There is a further objection to the claims for payment of moneys to several parties named for services in efforts to secure appropriation by Congress in 1901, upon the ground that the employment of parties exclusively for services of that character is contrary to public policy and discountenanced by courts."

(The auditor referring thereby to the credits claimed by this defendant for payments made by Wm. E. Earle to O. D. Conger and Son $2,000.00, Phil. B. Thompson $2,500.00, Walter S. Hutchins $5,200., Frank P. Morgan $150.00, H. W. Worthington $200.00, Wm. McAdoo $100, H. D. Money, $1,000, Robert B. Bradford $3,609.05, Dudley & Michener $2,000.00 and C. R. Shelly $1,000.00)

318 "On this point I hold that a line must be drawn between the rendition of legal services and those which may be termed the exercise of personal influence or persuasion. In this case some of the parties so employed and paid were lawyers, and it is in proof that by some of them briefs and arguments were prepared and submitted to the several committees of the two houses of Congress having in charge the matter of the appropriation. The claims for these payments I think should be allowed, while the

claims for payment for other than legal services should be excluded from allowance, which is a course I have adopted in this accounting."

On page 2 of "Schedule A" of said report it is shown that the only payments made by the late Wm. E. Earle to those attorneys associated with him referred to by the auditor on pages 6 and 7 of his report which he has given this defendant credit for in his account, are O. D. Conger and Son $2,000.00, Phil. B. Thompson $2,500.00, Dudley & Michener $2,000.00, making a total of $6,500.00, to all of which this defendant except-; and this defendant claims that he is entitled to a credit for the following sums as shown by the record as having been paid by his father, besides the credit of $6,500.00 allowed, to wit; Walter S. Hutchins $5,200.00, Frank P. Morgan $150.00, H. W. Worthington $2,000.00, Wm. McAdoo $100.00, H. D. Money $1,000.00, Robert B. Bradford $3,608.05 and C. R. Shelly $1,000.00, making a total of $17,758.05. Among the grounds of exception to the above, are, the following:

First. They were proper payments under the terms of the agreement between complainant and defendant's testate.

Second. That by the accounts kept by the defendant's testate, as ordered by the court, and incorporated in the agreement between complainant and defendant's testate, these payments were shown to have been made, and the record discloses the fact, that the
319 complainant examined these books of account from time to time during the life time of defendant's testate and shortly after the payments were made; that the record further discloses, that this defendant's testate had notified those interested under complainant's agreement with said defendant's testate, that said payments had been made and were for legitimate services, and that there was no fund out of the 1891 appropriation for distribution.

Third. That the books of account kept by order of the court when examined by complainant, subsequent to the payment of claims appropriated for by the appropriation of 1891, at the request of defendant's testate, constituted in law an account stated.

Fourth. That the contract between defendant's testate and complainant was not under seal, and required an accounting every six months; and the record discloses that the complainant had been informed, and had ascertained from the books that by reason of payments to counsel employed to assist in the prosecution of these claims, there was no fund in the hands of defendant's testate for division; and complainant allowed more than three years during the lifetime of defendant's testate, and seven years after the death of defendant's testate, to elapse before filing the present suit.

Fifth. That the record shows that the 1891 fund was realized from the services rendered by these gentlemen associated with defendant's testate, and complainant cannot claim a right to participate in the fund, and, at the same time, in equity and good conscience, be heard to say, that, the services paid for in assisting to secure the fund were illegal and improper.

320 *Sixth.* That complainant is barred by the statute of limitation from contesting said payments.

Sixth. That complainant is guilty of laches.

Second exception.

The auditor has stated on page 9 of his report:

"Under the agreement between Henry M. Earle and Curtis & Pickett of November 23, 1894, the defendant claims to have paid said Curtis & Pickett a sum equal to 30 % of the fees received by the estate of Wm. E. Earle under the appropriation of March 3, 1899, amounting to $15.164.78. To this vigorous objections are made by counsel for complainant, and additional testimony was taken here to show what services were rendered by these two gentlemen in connection with the collection of the fees due to Wm. E. Earle, or his estate, upon the claims included in the appropriation act of 1899. It will be remembered that as to all of these claims the cases in the Court of Claims had been prosecuted to a conclusion and finding in favor of the claimants by the court had been transmitted to Congress prior to the death of Wm. E. Earle. The subsequent services rendered in relation to these claims were in direction of securing from Congress an appropriation of the sum necessary for their payment. There was one additional class of work imposed upon the attorneys for the claimants in relation to some of the claims, that is to say, the necessity of satisfying the Treasury Department of the identity of the claimants, or parties interested to receive the money."

Then again, on page 10 of his report the auditor states:

"After a careful consideration of the facts as they appear in proof, I am of the opinion that the services in question did not require the attention of these three gentlemen * * * I have, therefore, in the accompanying account allowed a credit for one-half of the said 30 %, which is a liberal allowance for the present accounting."

To all of which this defendant excepts, and claims that he is entitled to a credit in the account for $15,164.78 paid by him to Messrs. Curtis & Pickett for services rendered in this litigation.

321 Among the grounds of exception to the above are the following:

First. The said payment was authorized by the terms of the agreement between complainant and defendant's testate.

Second. That as shown by the contracts between defendant's testate and the French spoliation claimants the basis of same were contingent fees for professional services, not rendered in securing findings by the Court of Claims, but in prosecuting said claims to a conclusion, That by the death of defendant's testate all contracts with claimants were vitiated, and the only interest that the defendant's testate had in the claims, at the most, was a *quantum meriut.*

Third. That under all the surrounding circumstances as disclosed

by the record, the terms of said agreement between the defendant and Messrs. Curtis & Pickett were reasonable and beneficial.

Fourth. That the fund here for distribution having been realized by services performed by Messrs. Curtis & Pickett under said agreement, and it does not lie in complainant's mouth, while claiming a right to participate in the fund so realized by virtue of said contract, to object to the terms of same at this late day, more than seven years subsequent to the date of same.

Third exception.

This defendant excepts to the following credits allowed him on page 2 of "Schedule A" of the auditor's report, to wit, item "office rent from August 1, 1885, to August 1, 1893, $3,448.17, and the item "Office expenses from August 1, 1885 to August 1, 1893, $18,332.15," making a total for office expenses from August 1, 1885 to Au-
322 gust 1, 1893 of $21,780.32; whereas the books of account kept under order of the court, and the vouchers offered in evidence, show a total for office expenses from August 1, 1885 to August 1, 1893, of $22,320.22 which amount this defendant is entitled to a credit for.

Fourth exception.

This defendant excepts to the amount found by the auditor as the net balance of the fees in his hands as set forth on page 2 of "Schedule A" of the auditor's report to be $30,198.82; and this defendant claims that by proper allowance of credits for the sums paid by his testate and himself as expenses as enumerated in the foregoing exceptions, the net balance of fees which he is called upon to account for should be, $11,518.28.

Fifth exception.

This defendant excepts to the taxation of costs of this report and account by the auditor as shown on page 2 of "Schedule A" to be $350.00 The grounds of exceptions is not to the amount of the auditor's fees but to apportioning same ¾ against this defendant and ¼ against the complainant. This defendant claims that all costs should be taxed against the complainant.

Sixth exception.

This defendant excepts to the amount found to be due to the complainant from this defendant, as shown on page 2 of "Schedule A" of the auditor's report to be $7,462.20; and claims that by a proper allowance of the items set forth in the foregoing exceptions, the amount should be found as due the complainant from this defendant to be $2,879.57.

HENRY M. EARLE,
A'm'r of Wm. E. Earle, Deceased.

323 I hereby certify that I am counsel for the defendant in the above entitled cause, Henry M. Earle, administrator of Wm. E. Earle, deceased, and that in my opinion the matters of law stated in the foregoing exceptions to the auditor's report are well founded in law.

JOHN C. GITTINGS,
Sol'r for Defendant.

CITY OF NEW YORK, }
State of New York, } *ss:*

I Henry M. Earle, being first duly sworn, on oath do say that I have read the foregoing exceptions and the facts stated in said exceptions as true, I know to be true, and those stated on information and belief I believe to be true; and I further state that said exceptions are not filed for delay.

HENRY M. EARLE.

Sworn and subscribed to before me this 9th day of December, 1902.

[SEAL.] HENRY C. QUINBY,
Notary Public, New York County.

324 *Certificate and Affidavit of Counsel.*

Filed December 12, 1902.

Supreme Court of the District of Columbia.

THOMAS E. WAGGAMAN, Adm'r, &c., }
vs. } Equity. No. 21962.
HENRY M. EARLE, Adm'r, &c. }

DISTRICT OF COLUMBIA, *ss:*

Thomas E. Waggaman being duly sworn deposes and says that he is the complainant in the above entitled cause. That the exceptions taken by him to the report of the auditor are not filed for delay, and that the allegations of fact in said exceptions are true, to the best of his knowledge and belief.

T. E. WAGGAMAN.

Subscribed and sworn to before me this 11th day of December, A. D., 1902.

[SEAL.] CLARKE WAGGAMAN,
Notary Public.

We, counsel for the complainant in the above entitled cause, certify that, in our opinion, the matters of law stated and set forth

in the exceptions filed by the complainant to the auditor's report in the above entitled cause are well founded in law.

WM. J. MILLER,
S. T. THOMAS,
IRVING WILLIAMSON,
Solr's for Compl't.

325 *Decree.*

Filed March 26, 1903.

In the Supreme Court of the District of Columbia.

THOS. E. WAGGAMAN, Adm'r James H. Causten,
vs.
HENRY M. EARLE, Adm'r Wm. E. Earle, Deceased.
} In Equity. No. 21962.

This cause came on to be heard at this term upon exceptions by the complainant and the defendant to the report of the auditor filed herein, November 13th, 1902 and being argued by counsel for the respective parties and submitted, it is this 26th day of March 1903 adjudged, ordered and decreed that all of said exceptions be and the same are hereby overruled; and that said report of the auditor be and the same is hereby ratified and confirmed.

By the court:

A. B. HAGNER,
Asso. Justice.

From the foregoing decree the defendant appeals to the Court of Appeals and his appeal bond in hereby fixed at $10,000, to operate as a supersedeas.

A. B. HAGNER.

26 March '03.

From the foregoing decree the defendant appeals to the Court of Appeals and his appeal bond is hereby fixed at $250. not to operate as a supersedeas.

A. B. HAGNER,
Asso. Justice.

6 Ap'l / 03.

No objection
S. T. THOMAS.

326 *Order Book.*

Supreme Court of the District of Columbia.

T. E. WAGGAMAN, Adm'r, &c.,
vs.
HENRY M. EARLE, Adm'r, &c. } Equity. No. 21962.

APRIL 7, 1903.

The clerk will please enter an appeal by the complainant to the Court of Appeals from the decree passed on March 26, 1903, confirming auditor's report and issue citation to Henry M. Earle, adm'r, &c.

I. WILLIAMSON,
S. T. THOMAS,
W. JNO. WILLER,
Sol'rs for Complainant.

Appeal entered 1903–4–7.
BY CLERK.

327 *Order.*

Filed April 8, 1903.

In the Supreme Court of the District of Columbia.

THOMAS E. WAGGAMAN, Administrator, &c.,
vs.
HENRY M. EARLE, Administrator, &c. } Equity. No. 21962.

It appearing to the court that the complainant in the above entitled cause has entered an appeal to the Court of Appeals from the decree passed herein on March 26, 1903, it is this 8th day of April, A. D., 1903, on motion of said complainant, adjudged and ordered by the court that the penalty of the bond for costs to be given by said complainant on said appeal be fixed in the sum of two hundred and fifty dollars.

A. B. HAGNER, *Justice.*

I consent to this order and waive citation.

JOHN C. GITTINGS,
Sol'r for Def't.

328 *Memoranda.*

April 8, 1903.—Appeal bond filed by complainant.
April 13, 1903.—Appeal bond filed by defendant.
May 8, 1903.—Time to file transcript of record in Court of Appeals extended from time to time to May 1, 1904.

329 *Stipulation.*

Filed March 2, 1904.

In the Supreme Court of the District of Columbia.

THOMAS E. WAGGAMAN, Adm. *d. b. n. c. t. a.*,
vs.
HENRY M. EARLE, Adm. *d. b. n. c. t. a.* } Equity. No. 21962.

It is hereby stipulated and agreed by and between the parties to this cause that one of the contracts entered into by William E. Earle with claimants and one of the contracts entered into by Curtis, Pickett, and Earle with claimants after William E. Earle's death are sufficient to go into the record for the Court of Appeals, as they are all identical in form; and it is further stipulated and agreed that the contract between John C. Ropes administrator, with William E. Earle, and the contract between John C. Ropes adm. and Curtis Pickett and Earle be used for this purpose.

IRVING WILLIAMSON,
S. T. THOMAS,
Sol's for Compl't.
WM. JNO. MILLER,
Asso. Sol'r.

JOHN C. GITTINGS,
Sol'r for Def't.

330 *Directions to Clerk for Preparation of Transcript.*

Filed March 2, 1904.

In the Supreme Court of the District of Columbia.

THOMAS E. WAGGAMAN, Adm. *d. b. n. c. t. a.*,
vs.
HENRY M. EARLE, Adm. *d. b. n. c. t. a.* } Equity. No. 21962.

The clerk will please make up the record for the Court of Appeals and include therein the following pleadings and papers, and no other:

Bill of complaint and exhibits thereto.
Answer of defendant.
Replication.
Order of reference to auditor.

Auditor's report and testimony, including the following exhibits:
1. The several accounts filed by the defendant.
2. Statement of Kliensmedt, clerk Court of Claims.
3. Contract between John C. Ropes, admin., and Wm. E. Earle.
4. Letter from H. M. Earle to Waggaman, Sept. 15th, 189–.
5. Letter from H. M. Earle to Waggaman, Nov. 22d, 1894.
6. Contract between John C. Ropes, admin., and Curtis, Pickett and Earle.
7. Letter from Waggaman to Wm. E. Earle, dated March 31, 1893.

331 8. Contract between Clark, Simms and Stuart and Brown and Wm. Earle.

8½. Record of equity cause, Earle *vs.* John F. Stuart *et al.*
9. Arbitrators' decision in Earle *vs.* Clark and Simms.
10. Contract between Wm. E. Earle and Curtis.
11 & 12. Letters from Wm. E. Earle to Miss Young, dated May 1st, 1891, and September 19, 1901.
13. Contract between Curtiss, Pickett and H. M. Earle.
14. Contract between Wm. E. Earle and Shellabarger and Wilson.
15. Contract where Earle, Stephens and Shellabarger and Wilson were jointly employed.

Exceptions to auditor's report filed by both parties.
Final decree; appeal taken therefrom taken by both parties.
Appeal bonds filed by both parties; and the several orders extending the time, in which to file case in the Court of Appeals.

IRVING WILLIAMSON,
S. T. THOMAS,
WM. JNO. MILLER,
Solicitors for Plaintiff.

JOHN C. GITTINGS,
Solicitor for Defendant.

332 *Stipulation, &c.*

Filed April 13, 1904.

In the Supreme Court of the District of Columbia.

THOMAS E. WAGGAMAN, Adm.,
vs.
HENRY M. EARLE, Adm. } Equity. No. —.

It is hereby stipulated and agreed, by and between the parties to this cause, that the clerk, in making up the records of the Court of Appeals, shall use copies of the three papers which are attached hereto, and substituted in place of the original, being, first—the letter from Henry M. Earle of September 15, 189–, to Thomas E. Waggaman, Esq.; second, the agreement between Wm. E. Earle,

party of the first part, and Shellabarger and Wilson; third, an agreement between Wm. W. Blackmar, administrator of the estate of Francis Armory, of the first part and Samuel Stevens, of Boston, and Shellabarger and Wilson and William E. Earle, of the city of Washington, of the second part.

I. WILLIAMSON,
Sol'r for Complainant.
JOHN C. GITTINGS,
Sol'r for the Defendant.

333 Filed April 13, 1904.

Office of Henry M. Earle, 1405 F street N. W.

WASHINGTON, D. C., *Sept. 15th*, 189–.

Thos. E. Waggaman, Esq.

DEAR SIR: Your letter of even date received, requesting me to give you in accordance with my conversation with you some weeks ago my views, etc. etc., on the subject of the present status of the French spoliation cases. I have been very diligently at work at this matter, and in a few days will have gotten matters sufficiently straightened out, to inform you fully and will call on you. Trusting that you can hold the matter over until then, I am

Very truly yours, HENRY M. EARLE.

Dictated.

Memorandum.

For agreement between William E. Earle and Shellabarger and Wilson, of date May 4, 1886, see Exhibit 1, page 280 of this record.

334 Agreement by and between Wilmon W. Blackmar, adm. of estate not already administered of Francis Amory, late of Milton, Mass., of the first part, and Samuel Stevens, of Boston, Shellabarger & Wilson, and William E. Earle, of Washington, D. C., party of the second part.

Witnesseth that, whereas the — first part is interested in the collection from the United States of a certain claim or claims for the destruction of property by French spoliation prior to July 30th, 1801, the adjudication of which is provided for by the act of Congress approved the — day January, 1885, entitled "An act to provide for the ascertainment of claims of American citizens for spoliations committed by the French prior to the 31st day of July 1801."

Which claim is for the loss of the Eliza and others.

The party of the first part, in consideration of the agreement by said second party (said Stevens as agent, Shellabarger & Wilson, and William E. Earle as attorneys at law), to faithfully prosecute

the collection of said claim under said act, hereby employes said second party as agent and attorneys to prosecute said collection by taking, preparing and presenting such testimony as may be obtainable and requisite for the due prosecution of said collection, and by attending, as attorneys, to said prosecution before the Court of Claims, at Washington, D. C., as provided by act of Congress; and such first party further agrees to promptly, and in due season, furnish such second party with all the papers, documents, information, evidence and other aid which it shall be within the power of the
335 first party to furnish; and which may be deemed by the second party required or useful for the prosecution of said collection, and the first party further agrees to allow and pay unto said second party for said services, an amount equal to twenty-five per cent. of whatever shall be collected upon said claim, said twenty-five per cent. being the amount agreed upon between the said parties hereto, as a just and reasonable compensation for said services.

And it is further agreed that said party shall hold such liens and other rights for securing such compensation as are lawful under and contemplated by the acts of Congress.

And such second party, in consideration of all the premises aforesaid, hereby agree faithfully, and to the best of their skill, to render unto the first party the services above named and described, and to accept in full compensation therefor the above-named compensation as stipulated to be paid by the first party, the said first party having advanced thereon the sum of one hundred dollars as a retainer, and to cover all expenses, including printing and the taking of testimony, which sum is to be deducted from the twenty-five per cent. above stated, when the claim is recovered.

In witness whereof the said parties respectively of the first and second parts, hereto set their hands this 4th day of February, 1886.

(S'g'd) WILMON W. BLACKMAR,
Adm'r Estate Francis Amory.

(S'g'd) SAM'L STEVENS,
For Party of Second Part.

Received one hundred dollars as retainer on this contract, the same to be deducted from whatever sum may become due the second party thereunder.

336 Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA, *District of Columbia,* } *ss:*

I, John R. Young, clerk of the supreme court of the District of Columbia, hereby certify the foregoing pages, numbered from 1 to 335, inclusive, to be a true and correct transcript of the record, as per

directions of counsel herein filed, copy of which is made part of this record, in cause No. 21,962, in equity, wherein Thomas E. Waggaman, administrator *de bonis non* with the will annexed of James H. Causten, deceased, is complainant, and Henry M. Earle, administrator *de bonis non* with the will annexed of William E. Earle, deceased, is defendant, as the same remains upon the files and of record in said court.

In testimony whereof, I hereunto subscribe my name and affix the seal of said court, at the city of Washington, in said District, this 19th day of April, A. D. 1904.

Seal Supreme Court of the District of Columbia.

JOHN R. YOUNG, *Clerk.*

Endorsed on cover: District of Columbia supreme court. No. 1422. Thomas E. Waggaman, adm'r, &c., appellant, *vs.* Henry M. Earle, adm'r, &c.; and No. 1423. Henry M. Earle, adm'r, &c., appellant, *vs.* Thomas E. Waggaman, adm'r, &c. Court of Appeals, District of Columbia. Filed April 20, 1904. Henry W. Hodges, clerk.

FRIDAY, *May 5th, A. D.* 1905.

No. 1422.

THOMAS E. WAGGAMAN, Administrator *de bonis non,* with the Will Annexed, of James H. Causten, Deceased, Appellant,

vs.

HENRY M. EARLE, Administrator *de bonis non,* with the Will Annexed, of William E. Earle, Deceased.

and

No. 1423.

HENRY M. EARLE, Administrator *de bonis non,* with the Will Annexed, of William E. Earle, Deceased, Appellant,

vs.

THOMAS E. WAGGAMAN, Administrator *de bonis non,* with the Will Annexed, of James H. Causten, Deceased.

The argument in the above entitled cause- was commenced by Mr. S. T. Thomas, attorney for the appellant in No. 1422 and for the appellee in No. 1423, and was continued by Mr. J. C. Gittings, attorney for the appellee in No. 1422 and for the appellant in No. 1423, and was concluded by Mr. M. J. Colbert, attorney for the appellant in No. 1422 and for the appellee in No. 1423.

No. 1423.

HENRY M. EARLE, Administrator *de bonis non,* with the Will Annexed, of William E. Earle, Deceased, Appellant,

vs.

THOMAS E. WAGGAMAN, Administrator *de bonis non,* with the Will Annexed, of James H. Causten, Deceased.

Opinion.

Mr. Justice MORRIS delivered the opinion of the Court:

These are cross-appeals from one and the same decree of the Supreme Court of the District in a proceeding in equity for accounting between the parties.

It appears from the record that James H. Causten, long since deceased, and formerly a resident of this District, had accumulated papers deemed to be of great value with reference to the numerous claims against the United States known as the "French Spoliation Claims," growing out of the treaty of —— between France and the United States. Under some arrangement between his legal representatives and Mr. William E. Earle, now deceased, but formerly a lawyer resident in this city and District, these papers came into the hands of Mr. Earle. In course of time Thomas E. Waggaman

was appointed administrator *de bonis non* with the will annexed of James H. Causten; and as the times seemed to have become more propitious than they had been for the allowance and payment of the claims in question, Waggaman, as administrator, with the ratification and approval of the Orphans' Court, entered into a contract in writing with Earle, whereby the latter was to have the continued possession of the Causten papers for use in the prosecution of the French spoliation claims, of all or nearly all of which he had then acquired, or afterwards acquired, the charge and control; and for such continued possession and use he was to pay to Waggaman 25 per centum of all the fees which he should receive on account of these claims, "after deducting the proper expenses incurred by him since the passage of the act of Congress referring said cases to the Court of Claims (act of January 20, 1885, 23 Stat. 283), in the prosecution of said French spoliation claims, such as clerk hire, printing, advertising, office rent, and the compensation of other attorneys necessarily associated with him, and in whose compensation said Earle does not share."

It was a further provision of the agreement that Earle should keep books of account of the expenses incidental to the prosecution of the claims, which should be open at all times to the inspection of Causten's administrator; and that settlements should be made every six months and the proportionate share of the fees paid to the administrator. This provision, so far as the semi-annual payments were concerned, was not observed; and Waggaman was not satisfied with the manner in which the books were kept.

The agreement was entered into on June 12, 1885, and Earle died on August —, 1894. In the meantime a large number of the claims had been prosecuted to a successful issue in the Court of Claims, and had been certified back to Congress for its final action thereon and for an appropriation for their payment, in the event of the approval by Congress of the action of the Court of Claims. By an act of March 3, 1891 (26 Stat. p. 897), Congress approved in part the findings of the court, which were only findings, and not formal judgments, and made an appropriation for partial payment. Out of this appropriation, according to his own showing at the time to Waggaman, Mr. Earle received as fees up to July, 1893, the sum of $38,745.63, while his books showed expenditures to the date last mentioned amounting to $57,318.66. Instead of a surplus to be divided, there was therefore a deficiency of upwards of $18,000. Fees, however, to the amount of nearly $50,000 were anticipated from an additional appropriation which it was hoped would be made in 1893, but which was not made. And there was no further appropriation until 1899, upwards of four years after Earle's death, when, under an appropriation act of March 3, 1899 (30 Stat. p. 1191), fees were received by the administrator of Earle amounting to $50,176.64.

Thereafter negotiations for a settlement between Earle's administrator and Causten's administrator having proved abortive, the present proceeding was instituted by the latter for an accounting. After pleadings in due form, the cause was referred to the auditor

of the court for the statement of an account, and that officer, after considerable testimony had been adduced which was returned to the court with his report, found the sum of $7,462.20 to be due from the defendant to the complainant. Exceptions were filed by both parties which will be noticed more in detail hereafter. The court overruled them all and ratified the auditor's report without any order or decree for the payment of the amount so found due, and from the order of ratification both parties have appealed to this court.

The complainant Waggaman filed nine exceptions to the auditor's report; the defendant Earle filed six. We will first consider those of the complainant.

1. The first of the complainant's exceptions is to the allowance of $3,448.17 for office rent claimed to have been paid by Earle from August 1, 1885, soon after the agreement became effective, to August 1, 1893, the month and year in which Earle died. It is argued that Earle was a lawyer in general practice presumably maintaining an office for that purpose; that his whole office rent was $45 a month; that more than two-thirds of this, or $35.96 a month is charged against the Causten contract, and that one-half of this sum would have been a sufficient allowance. But the contract provides for the allowance of "office rent," and it is in evidence that Earle had little or no other legal business except that of the French spoliation claims. His office seems to have been maintained almost exclusively for the prosecution of those claims, and we do not find that four fifths, or thereabouts, of the $45 which he paid each month is an exorbitant charge against the business, which was almost his exclusive business. In the ultimate analysis, this is only a charge of about one-fifth of the rent against the Causten estate. We regard this exception as having been properly overruled.

2, 3. The second exception is to the allowance of items of "office expenses" amounting to $18,332.15, alleged to have been incurred to July 15, 1893, just before Earle's death; and the fourth exception, which is of a similar character, is to the allowance of a similar aggregate of items, amounting to $1,993.39, claimed to have been incurred between July 15, 1893, and November 1, 1900. And these are objected to for the reason that there is no sufficient proof of them, and that it was incumbent upon the defendant to adduce such proof. Undoubtedly it is the law that upon him who would make a charge against another lies the burden of proof that the charge is just. In this case, by his agreement, Earle undertook to keep proper books of account, which on their face would show the propriety of the items of expense which he would charge against the other contracting party; and it may well be that, in this aggregate sum of $20,325.54 there are numerous items which should not have been included in the account. But there are numerous other items, such as for printing and copying, for example, which are undoubtedly just and proper. But some allowance must be made for the difficulties of proof resulting from Mr. Earle's death, and other circumstances referred to in testimony; and the case is a proper one for us, in the hearing in this court, to apply the rule laid down and applied in the case of *Richardson v. Van Auken,* 5 D. C. App. 209,

and in the several cases there cited, that an appellate tribunal can not consider vague and indefinite and merely general exceptions to an auditor's report. This court can not substitute itself for the auditor, and go over the details of an account for itself, beyond what is specifically pointed out as error.

In the case of *Richardson v. Van Auken,* above cited, it was said: "The findings of a master or an auditor, concurred in by the court below, are to be taken as presumptively correct, and will be permitted to stand, unless some obvious error has intervened in the application of the law or the principles of the decree under which he acts, or some important mistake has been made in the evidence, and which has been clearly pointed out and made manifest." We see no reason why this rule should not be applied to the complainant's second and third exceptions and the assignments of error based upon them. These exceptions are too general.

4, 5. The complainant's fourth exception is to the allowance of a sum of $6,150, paid by Mr. Earle during a period of eight years to Mr. William T. S. Curtis, which is less than at the rate of $65 a month; and his fifth exception is to the allowance of a sum of $10,400, paid by him during the same period to T. J. Pickett for similar clerical services, and ultimately also for legal services as an associate attorney, which is at the rate of a little over $100 a month. These compensations do not seem to be excessive. Curtis and Pickett testified that they rendered the services; that those services were practically continuous and engrossing enough, and that they received the money for them from Earle. In the absence of countervailing proof by the complainant, it is difficult to see why these items of expense should be held unreasonable. The contract provided for the allowance of "clerk hire" and for compensation to assistant attorneys, and we fail to see wherein the auditor has erred in these two allowances to the defendant.

6, 7, 8. The sixth, seventh, and eighth exceptions of the complainant are to three several allowances—one for $2,000, a second for $2,500, and a third for $2,000—to three several persons, claimed to be for *"professional services"* rendered by them. We find it impossible to read the record without coming to the conclusion that these alleged services were of the kind known as *"lobbying services."* The proof, indeed, in regard to them is of the vaguest character, and utterly insufficient in any event to support them as proper charges in this accounting. But, so far as it goes, it points unmistakably to those illicit services, personal influence and personal solicitation, which the courts have branded as improper for their consideration, and for which they will not allow recovery. It is a peculiar fact that no one of the persons to whom these several sums are claimed to have been paid was called to testify in regard to them, although they were all accessible and could easily have been summoned. The inference from this omission is not favorable to the defendant's claim for these allowances.

There is some feeble pretense that one of the parties prepared a brief for use before one of the committees of Congress, but it is the merest pretense and wholly unworthy of consideration. There is no

reason to suppose that a copy of the brief could not have been produced if it ever existed, nor does it appear what exigency there was for the preparation of such a brief.

If these alleged services were legitimate and professional, it is not apparent why they could not have been rendered by Mr. Earle himself. He was fully competent, and his contract with Waggaman included them. If, on the contrary, they were of the lobbying kind and illegitimate, they should not be allowed. In either case they are improper charges against the interest represented by the complainant. In fact, as disclosed by the record, Mr. Earle, during his lifetime, in his communications with some of the persons interested in the Causten estate, admitted the true character of these expenditures, and sought in vain to have them legitimated and recognized.

Under the decision of this court in the case of *Owens v. Wilkinson*, 20 D. C. App. 51, and under the decisions therein cited, we must hold that these items should have been excluded from this account, and that it was error to admit them.

9. The complainant's ninth and last exception was to an allowance of $700 to one L. B. Clark for his expense and compensation for making some investigation among the records of the custom houses in Rhode Island and Connecticut in connection with the French spoliation claims. The special purpose of this investigation is not fully disclosed; but the item on its face is not unreasonable, and under the rule heretofore stated, it is incumbent in this court upon the complainant to show the impropriety of its allowance. This has not been done, and we can not disturb the finding.

10. The defendant filed six exceptions, and bases assignments of error upon each and all of them. It would subserve no good purpose to consider them in detail. It must suffice to say that we regard no one of them as well founded. Some of them are directed to the refusal of the auditor to allow for certain alleged services, evidently of a lobbying character, but which he regarded as more objectionable than those which he allowed and which we hold should have been excluded from the account.

There is considerable insistence by the defendant upon the supposed laches of the complainant, that is, his delay in the institution of proceedings to enforce his claim; and the benefit of the Statute of Limitations is sought by him, not in his answer to the bill or anywhere in the pleadings, but only in argument. But if there are any laches in this case, they are the laches rather of the defendant than of the complainant. It was claimed by Mr. William E. Earle, and the statement is reasserted by the defendant in his brief, that up to July, 1893, there was no surplus of fees to be divided with the Causten estate, but rather a deficit of upwards of $18,000. Now, if this statement was correct, there was nothing to be divided until after the passage of the appropriation bill of March 3, 1899; if it was not true, the statement was a fraud, which the complainant would seem to have no opportunity to discover at the time. Assuming the statement to have been true, and that there was no money to be divided before March 3, 1899, we fail to see wherein there are any laches on the part of the complainant, who thereupon, after some

fruitless negotiations with the defendant, filed the present suit within two years thereafter, on January 2, 1901. There is no ground for the imputation of laches.

Except in the one feature of the allowance of certain fees for lobbying services, we find no error in the auditor's report or in the order of the court below ratifying the same. But for this error the order appealed from must be reversed, with costs against the defendant Earle; and the cause will be remanded to the Supreme Court of the District with directions to reform its order in that regard and to enter a decree in accordance with this opinion. And it is so ordered.

Reversed.

TUESDAY, *May 23rd, A. D.* 1905.

April Term, 1905.

No. 1422.

THOMAS E. WAGGAMAN, Administrator *de bonis non*, with the Will Annexed, of James H. Causten, Deceased, Appellant,

vs.

HENRY M. EARLE, Administrator *de bonis non*, with the Will Annexed, of William E. Earle, Deceased.

and

No. 1423.

HENRY M. EARLE, Administrator *de bonis non*, with the Will Annexed, of William E. Earle, Deceased, Appellant,

vs.

THOMAS E. WAGGAMAN, Administrator *de bonis non*, with the Will Annexed, of James H. Causten, Deceased.

Appeals from the Supreme Court of the District of Columbia.

This cause came on to be heard on the transcript of the record from the Supreme Court of the District of Columbia, on appeal and cross appeal, and was argued by counsel. On consideration whereof it is now here ordered, adjudged, and decreed by this Court that the decree of the said Supreme Court in this cause be, and the same is hereby, reversed with costs against the defendant Earle; and that this cause be, and the same is hereby remanded to the said Supreme Court with directions to enter a decree in accordance with the opinion of this Court.

Per MR. JUSTICE MORRIS,
May 23, 1905.

In the Court of Appeals, District of Columbia, April Term, 1905.

No. 1423.

HENRY M. EARLE, Administrator *d. b. n. c. t. a.* of William E. Earle, Deceased, Appellant,

vs.

THOMAS E. WAGGAMAN, Administrator *d. b. n. c. t. a.* of James H. Causten, Deceased.

Now comes the appellant, Henry M. Earle, and notes an appeal to the Supreme Court of the United States in the above entitled cause, and prays this honorable Court to fix the amount of the bond for costs.

JOHN C. GITTINGS,
Att'y for Appellant.

(Endorsed:) No. 1423. Henry M. Earle, Administrator, *d. b. n. c. t. a.* of William E. Earle, deceased, Appellant, *vs.* Thomas E. Waggaman, Administrator, *d. b. n. c. t. a.* of James H. Causten, deceased. Appeal noted to the Supreme Court of the United States by the Appellant. Court of Appeals, District of Columbia. Filed Jun- 15, 1905. Henry W. Hodges, Clerk.

THURSDAY, *June* 15*th*, *A. D.* 1905.

No. 1423.

HENRY M. EARLE, Administrator *de bonis non*, with the Will Annexed, of William E. Earle, Deceased, Appellant,

vs.

THOMAS E. WAGGAMAN, Administrator *de bonis non*, with the Will Annexed, of James H. Causten, Deceased.

On motion of Mr. J. C. Gittings, attorney for the appellant in the above entitled cause, it is ordered by the Court that the said appellant be allowed an appeal to the Supreme Court of the United States, and the bond for costs is fixed at the sum of three hundred dollars.

(*Bond on Appeal.*)

Know all men by these presents, that we, Henry M. Earle, Adm. *d. b. n. c. t. a.* of Wm. E. Earle, deceased, as principal, and Title Guaranty & Trust Company of Scranton, Penna., as surety, are held and firmly bound unto Thomas E. Waggaman, Admr. *d. b. n. c. t. a.* of James H. Causten, deceased, in the full and just sum of three hundred 00/100 dollars, to be paid to the said Thomas E. Waggaman, Admr. *d. b. n. c. t. a.* of James H. Causten, deceased, his certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 17th day of August, in the year of our Lord one thousand nine hundred and five.

Whereas, lately at a Court of Appeals of the District of Columbia, in a suit depending in said Court, between Henry M. Earle, Admr. *d. b. n. c. t. a.* of William E. Earle, deceased, Appellant and Thomas E. Waggaman, Admr. *d. b. n. c. t. a.* of James H. Causten, deceased, a decree was rendered against the said Henry M. Earle, Admr. *d. b. n. c. t. a.* of William E. Earle, deceased, and the said Henry M. Earle, Admr. *d. b. n. c. t. a.* of William E. Earle, deceased, having prayed and obtained an appeal to the Supreme Court of the United States to reverse the decree in the aforesaid suit, and a citation directed to the said Thomas E. Waggaman, Admr. *d. b. n. c. t. a.* of James H. Causten, deceased, citing and admonishing him to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date thereof;

Now, the condition of the above obligation is such, that if the said Henry M. Earle, Admr. *d. b. n. c. t. a.* of William E. Earle, deceased, shall prosecute said appeal to effect, and answer all damages and costs if he fail to make his plea good, then the above obligation to be void; else to remain in full force and virtue.

HENRY M. EARLE, [SEAL.]
Admr. d. b. n. c. t. a. of William E. Earle, Deceased.
By JOHN C. GITTINGS, *Att'y in Fact.* [SEAL.]
THE TITLE GUARANTY & TRUST CO. OF SCRANTON, PENNA., [SEAL.]
By GEO. E. JOHNSON, *Attorney in Fact.* [SEAL.]

[Seal of the Title Guaranty & Trust Co. of Scranton, Penna.]

Sealed and delivered in presence of—
FREDERICK S. TYLER.

Approved by—
SETH SHEPARD,
Chief Justice Court of Appeals of the District of Columbia.

[Endorsed:] No. 1423. Henry M. Earle, Administrator *d. b. n. c. t. a.* of William E. Earle, deceased, appellant, *vs.* Thomas E. Waggaman, Administrator *d. b. n. c. t. a.* of James H. Causten, deceased. Bond on appeal to Supreme Court of the United States. Court of Appeals, District of Columbia. Filed Aug. 21, 1905. Henry W. Hodges, Clerk.

UNITED STATES OF AMERICA, *ss:*

To Thomas E. Waggaman, Administrator *de bonis non,* with the will annexed, of James H. Causten, deceased, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date hereof, pursuant to an order allowing an appeal, filed in the Clerk's Office of the Court of Appeals of the District of Co-

lumbia, wherein Henry M. Earle, Administrator *de bonis non* with the will annexed of William E. Earle, deceased, is appellant, and you are appellee, to show cause, if any there be, why the decree rendered against the appellant, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Seth Shepard, Chief Justice of the Court of Appeals of the District of Columbia, this 21st day of August, in the year of our Lord one thousand nine hundred and five.

SETH SHEPARD,
Chief Justice of the Court of Appeals of the District of Columbia.

Service accepted this 21" day of Augt., 1905.
S. T. THOMAS,
M. J. COLBERT,
IRVING WILLIAMSON,
For T. E. Waggaman.

[Endorsed:] Court of Appeals, District of Columbia. Filed Aug. 21, 1905. Henry W. Hodges, Clerk.

Court of Appeals of the District of Columbia.

I, Henry W. Hodges, Clerk of the Court of Appeals of the District of Columbia, do hereby certify that the foregoing printed and typewritten pages numbered from 1 to 209 inclusive, contain a true copy of the transcript of record and proceedings of said Court of Appeals in the case of Henry M. Earle, Administrator *de bonis non* with the will annexed of William E. Earle, deceased, Appellant, *vs.* Thomas E. Waggaman, Administrator *de bonis non* with the will annexed of James H. Causten, deceased, No. 1423, April Term, 1905, as the same remain upon the files and records of said Court of Appeals.

In testimony whereof I hereunto subscribe my name and affix the seal of said Court of Appeals, at the City of Washington, this 22d day of August, A. D. 1905.

[Seal Court of Appeals, District of Columbia.]

HENRY W. HODGES,
Clerk of the Court of Appeals of the District of Columbia.

Endorsed on cover: File No. 19,897. District of Columbia Court of Appeals. Term No. 12. Henry M. Earle, administrator *de bonis non*, with the will annexed, of William E. Earle, deceased, appellant, *vs.* T. Percy Myers & John J. Hamilton, administrators *de bonis non*, with the will annexed, of James H. Causten, deceased. Filed September 1st, 1905. File No. 19,897.

(20,791.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1907.

No. 388.

HENRY M. EARLE, ADMINISTRATOR *DE BONIS NON, CUM TESTAMENTO ANNEXO*, OF WILLIAM E. EARLE, DECEASED, APPELLANT,

vs.

T. PERCY MYERS AND JOHN J. HAMILTON, ADMINISTRATORS *DE BONIS NON, CUM TESTAMENTO ANNEXO*, OF JAMES H. CAUSTEN, DECEASED.

APPEAL FROM THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

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Court of Appeals, District of Columbia, April Term, 1907.

No. 1794.

HENRY M. EARLE, Administrator *de Bonis non, cum Testamento Annexo*, of William E. Earle, Deceased, Appellant,

vs.

T. PERCY MYERS and JOHN J. HAMILTON, Administrators *de Bonis non, cum Testamento Annexo*, of James H. Causten, Deceased.

Appeal from the Supreme Court of the District of Columbia.

Filed June 10, 1907.

3 Supreme Court of the District of Columbia.

In Equity. No. 21962.

T. PERCY MYERS and JOHN J. HAMILTON, Administrators *de Bonis non, cum Testamento Annexo*, of James H. Causten, Deceased, Complainants,

vs.

HENRY M. EARLE, Administrator *de Bonis non, cum Testamento Annexo*, of William E. Earle, Deceased, Defendant.

UNITED STATES OF AMERICA, *District of Columbia, ss:*

Be it remembered, That in the Supreme Court of the District of Columbia, at the City of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had in the above-entitled cause, to wit:—

4 *Bill of Complaint.*

Filed January 2, 1901.

In the Supreme Court of the District of Columbia.

In Equity. No. 21962.

THOMAS E. WAGGAMAN, Administrator *de bonis non*, with the Will Annexed, of James H. Causten, Deceased,

vs.

HENRY M. EARLE, Administrator *de bonis non*, with the Will Annexed, of William E. Earle, Deceased.

To the supreme court of the District of Columbia, holding an equity court for said District:

Complainant states as follows:

1. That on the 18th day of April, 1885, he was duly appointed by this Court, holding a special term for Orphans' Court business,

Administrator *de bonis non* with the will annexed of the estate of James H. Causten, deceased, and having duly qualified by giving the bond required received his letters, and has been acting in that capacity ever since.

2. The defendant is the Administrator *de bonis non* with will annexed of William E. Earle, late of the District of Columbia, having been appointed by the same Court, and duly qualified as such. The complainant sues in the capacity aforesaid, and the defendant is sued in his representative capacity.

3. Among the assets of the estate of said James H. Causten were certain papers, books, documents and records relating to the French Spoliation Claims which, at the time of complainant's qualification as such Administrator, were in the custody of William E. Earle, the defendant's intestate. With a view of continuing in the possession of said papers and documents, and of obtaining the right to
5 use the same in the prosecution of the claims to which they related, certain proceedings were had in this Court, holding a special term for Orphans' Court business, looking to a contract between this complainant and said William E. Earle, and a decree was passed on the 1st day of May, 1885, by said Court directing the making of such contract between said parties.

4. Thereafter, on June 12th, 1885, this complainant, acting as such Administrator, and by virtue of said decree, entered into a written contract with said William E. Earle, which was signed by complainant and said William E. Earle in duplicate, said contract having by decree of said Court passed on the 5th day of June, 1885, been approved. A true copy of said contract is hereto annexed, marked Exhibit A, and prayed to be read and considered as a part of this bill.

5. The bond required by said decree, and referred to in said contract, was duly executed, approved by the Court, and is on file in the office of the Register of Wills for said District..

6. After the making of said contract, said William E. Earle continued in the custody of said papers and used the same in the prosecution of said claim so far as cases in which he was so counsel were concerned, and also permitted the same to be used in cases in the hands of other attorneys, who associated said Earle with them in the prosecution of such claims.

7. Said William E. Earle was an Attorney at Law, a member of the Bar of this Court, engaged in general practice, and also largely engaged in the prosecution of said claims, and he continued to make use of said papers in the manner hereinbefore indicated until the time of his death, which occurred on the 13th day of August, 1894. In the interval between the making of said contract and the death of said Earle he received a large number of fees, both by way of retainer upon his employment in various French Spoliation Claims, and by way of final compensation upon their final collection. He also made certain necessary expenditures for printing, but up to the
6 time of his said death never rendered any account to complainant showing itemized statements of all fees received by him, and of all disbursements, a share of which, under said

contract, was properly chargeable against the interest of the said Causten estate; nor did he pay to complainant each six months after the date of said contract the proportionate part of the fees due complainant's said estate, nor did he ever pay to complainant any amount under said contract. Complainant, from time to time, demanded of said William E. Earle settlements, as provided for by said contract, and payment of the share of fees due by him to said estate, to which demand said William E. Earle replied by claiming that he was not, at the dates of said demands, indebted to said estate, by reason of the fact that certain disbursements made by him exceeded the amount of fees received. The validity of these disbursements and the right of said William E. Earle to charge them, in whole or in part, against the proportion of the fees due the Causten estate was denied by this complainant, who was then allowed by said William E. Earle to examine certain books of account then exhibited by said Earle containing items of expense which said Earle claimed were chargeable against said estate. Having made such examination, this complainant notified said Earle that the statement of account, as contained in said books, was not accepted by him, and the accuracy thereof would be contested on final settlement. Said Earle was particularly informed by complainant that certain items, under the head of office expenses, Attorneys' fees and charges for expenses in connection with obtaining legislation, would be contested as not legitimate or proper charges, and that strict proof of the amount of fees received would be required. Said William E. Earle agreed that when the matter was in condition for a final accounting, or if not that, when other claims had been paid so as to make a partial accounting, all said matters of difference, if not settled by agreement of the parties, could be otherwise adjusted by judicial proceedings. And so the matter stood until after the
7 death as aforesaid of said William E. Earle, and the appointment and qualification of his Administrator, the defendant hereto. Immediately thereafter complainant requested of the defendant a full accounting and settlement under said contract, which accounting the defendant, from time to time, promised to make, but the rendering of such account was postponed by said defendant, who suggested a variety of reasons as explaining his delay, such as unsettled cases and controversies with other attorneys, and the length of the account to be submitted. Complainant, through his counsel, continued his demands upon the defendant until finally, about November 3rd, 1900, said defendant submitted an account of some thirty typewritten pages, purporting to show a total of fees received by said William E. Earle and his estate of $70,909.27, and claiming various disbursements for expenses, aggregating $62,445.46, leaving a net profit of $8,463.81, of which, under said contract, said Causten estate would be entitled to twenty-five per cent. Shortly after the receipt of said account complainant, through his attorney, notified the defendant in writing that said account was not accepted, and that its accuracy was disputed.

8. Complainant avers, upon information and belief, that said account, as rendered, is inaccurate in that the defendant has failed

therein to charge himself with all of the fees, for which his intestate and himself are responsible under the terms of said contract, and has neglected to embrace therein retainers so received. Said account is also incorrect in that it embraces charges for disbursements for no part of which the said Causten estate is liable, and in items of expenditures for a proportion of which said Causten estate is liable, a larger amount is charged against it than is permitted by the terms of said contract, and other items of expense set forth in said account are illegal and not permitted in any accounting between this complainant and said William E. Earle, or his legal representative.

9. Complainant is unable to settle said account with the
8 defendant, or adjust the matters of difference between them, and is without relief in the premises, except by the interposition of this Court.

Prayers.

Wherefore, complainant prays as follows:

1. That the defendant be required to make and file a full, true and accurate account of all moneys received by said William E. Earle in his life time, and by the defendant after his death, as fees for services in connection with the French Spoliation Claims, whether as retainers or final payments, and whether relating to cases prosecuted by said William E. Earle severally, or with others, and whether the said books and documents belonging to the Causten estate were used or not, and that in such account the said defendant may be required to set forth with particularity the names of all persons from whom such fees were received, the case or cases to which the same related, and the dates of payment either to said William E. Earle, or to his representative after his death.

2. That the defendant may be required in such account to set forth all disbursements claimed by him, specifying date of payment, to whom paid, and upon what account.

3. That upon the coming in of such account, the same may be passed upon by the Court with reference to the obligations of said William E. Earle and his estate under the terms of said contract, and that all claims of disbursement not authorized by the terms of said contract, or by law, may be rejected.

4. That upon final hearing a decree may be passed adjusting all matters of difference between the parties hereto, and decreeing the payment to complainant by the defendant of the amount finally determined to be due, with such interest as may be proper.

5. That if necessary this cause may be referred to the Auditor of this Court, with instructions to state an account between the
9 parties hereto under the terms of said contract, and to report to this Court for its further order in the premises.

6. That the rights of the parties hereto in respect of said books, papers and documents in the future may be determined in this cause, and the future custody thereof determined.

7. That complainant may have such other and further relief in the premises as the nature of the case may require.

To which end complainant prays for process against the said defendant, Henry M. Earle, Administrator as aforesaid, requiring him to appear and answer the exigency of this bill.

THOS. E. WAGGAMAN,
Complainant.

IRVING WILLIAMSON,
W. J. MILLER,
E. T. THOMAS,
M. J. COLBERT,
Solicitors for Complainant.

10 EXHIBIT A.

This contract made this 12th day of June, A. D., 1885, by and between Thomas E. Waggaman, administrator *de bonis non*, with the will annexed, of James H. Causten, deceased, duly appointed and qualified, acting in this behalf under and by virtue of a decree passed by the Supreme Court of the District of Columbia, holding a special term for Orphans' Court business, in the matter of said estate, on the 1st day of May, 1885, of the first part, and William E. Earle, of the second part, both of the District of Columbia, witnesseth:

Whereas said Earle is in possession of the books, documents, papers and records relating to the French Spoliation claims, of which said James H. Causten died possessed and desires to continue in the custody thereof, to the end that the same may be used in the prosecution of said claims. And whereas said Waggaman, administrator as aforesaid, hath been authorized to enter into a written contract with said Earle, in respect thereof, substantially as set forth in said decree of May 1st, 1885. Now Therefore, in consideration of the premises, said parties agree as follows:

1. Said Earle is to have the custody and charge of said papers, books, documents and records, and the exclusive use thereof, until the final adjudication of all the cases in which the same shall be used in any manner as evidence or otherwise, with the privilege to said Earle of allowing the same to be used in cases in the hands of other Attorneys who may associate him said Earle, in the prosecution thereof.

2. True books of account shall be kept by said Earle of all retainers and fees received, or which shall hereafter be received by him, and also of all expenses attending the prosecution of the French Spoliation Claims in which he shall be engaged as Counsel, or otherwise, which books of account shall be open at all times to the inspection of said administrator, or his successor in office.

11 3. In consideration of the use of said books, papers, documents and records, said Earle shall pay to said Waggaman, administrator as aforesaid, or his successor in office, twenty five (25) per cent. of all fees received, or which shall hereafter be received by him in each case, after deducting from all such fees received, or

which shall hereafter be received by him the proper expenses incurred by him, since the passage of the act of Congress referring said cases to the Court of Claims, in the prosecution of said French Spoliation Claims, such as clerk hire, printing, advertising, office rent, and the compensation of other attorneys necessarily associated with him, and in whose compensation said Earle does not share. And settlements between said Earle and said Waggaman, administrator as aforesaid, or his successor in office, shall be made every six months, and the proportionate part of said fees due said administrator, shall be paid over to said administrator or his successor in office, at such settlement.

4. In further consideration of the use of said books, papers, documents and records, it is further agreed by said Earle that said payment of twenty-five (25) per cent. shall be made to said administrator, or his successor in office, upon the fee of said Earle in all cases relating to said French Spoliation claims prosecuted by said Earle severally or with others whether the said books, papers, documents and records shall be used as evidence, or in enlightening the counsel engaged in such cases or not.

5. All amounts heretofore or hereafter received by said Earle as retainers or advances for expenses shall be first applied to the payment of the expenses referred to in the third paragraph of this contract, and such retainers or advances shall not be divided between said Earle, and said administrator or his successor in office, until the final settlement under this contract.

6. This contract shall be in full force and effect upon the execution by said Earle of the bond required by said decree, the
12 approval thereof by the Court, and the ratification of this contract by the Court.

In witness whereof said parties have hereunto set their hands, in duplicate, the day and year aforesaid.

THOS. E. WAGGAMAN,
Administrator de bonis non, with the Will Annexed, of James H. Causten.
WM. E. EARLE.

Witness:
IRVING WILLIAMSON.

13 Supreme Court of the District of Columbia, Holding a Special Term for Orphans' Court Business.

In re Estate of JAMES H. CAUSTEN, Deceased.

It is this 5th day of June 1885 ordered by the Court that upon the signature of the parties to the above contract, and the approval of the bond therein referred to, this contract stand approved.

A. B. HAGNER,
Associate Justice.

14 *Answer.*

Filed March 5, 1901.

In the Supreme Court of the District of Columbia.

In Equity. No. —.

THOMAS E. WAGGA*ham*, Administrator *d. b. n. c. t. a.* of James H. Causten, Deceased,
against
HENRY M. EARLE, Administrator *d. b. n. c. t. a.* of William E. Earle, Deceased.

To the supreme court of the District of Columbia, holding an equity court for said District:

In answer to the bill of complaint filed herein, the defendant, Henry M. Earle, respectfully states as follows:

First. The defendant admits the allegations contained in paragraphs one, two, three, four, five and six of the plaintiff's bill.

Second. In answer to the seventh paragraph defendant admits the statements therein contained, relative to the prosecution of said claims by William E. Earle, and that he received certain fees and made certain expenditures as therein stated, and that no payment was made to the complainant on account of the same, for the reason stated in said paragraph, viz: that it was agreed by and between the said William E. Earle and complainant that when other fees had been paid so as to make a partial accounting of such matters, all differences would be settled by agreement, or otherwise, between the parties. The defendant further admits that the matter thus stood until he was appointed and qualified as administrator, which was in —— 1895, but denies positively that any settlement of a contract between the complainant and said William E. Earle was demanded at the time alleged, nor were any fees collected until sometime subsequent to March 4th, 1899, and the defendant therefore states, that the allegation to the effect that an account was promised by him, from about the time of his appointment as
15 administrator, to about November 3rd, 1900, is absolutely false and untrue. Soon after the appropriation of March 4th, 1899, and a collection of a small part of the fees thereunder, the complainant, through his attorney, demanded an accounting, which the defendant promised to make, and did make as soon as was practicable; and the defendant states that the allegation "that he suggests a variety of reasons explaining the delay," is untrue; and in further answer thereto defendant avers that it was at all times understood that it was impossible for him in person to make said accounting, as *we* was not aware of the details concerning same, and was obliged to depend upon Mr. Theodore J. Pickett, who had charge of the accounts, under the said William E. Earle, from about the time that the said contract with the Causten estate was made, and

owing to the fact that the said Theodore J. Pickett was engaged in collecting the fees under said appropriation, and preparing cases, which he was obliged to do under the terms of the said contract, and for the further reason that this work was delayed by considerable litigation, with other attorneys who had an interest in said fees.

That a number of said fees were not collected until about November, 1900, and it was useless to file said account until same was complete. The defendant admits that he was notified through the attorney for complainant, that the account was not accepted, but denies that any reason was given for same as alleged, but states that he immediately informed the counsel for complainant that the account was, in his opinion, correct in every detail, and that he would be glad, however, if there was any question concerning it, to cooperate in any way that would result in the fullest information and a satisfactory settlement; that no further reply was received from complainant or his counsel, but that this suit was filed.

Third. In answer to the eighth paragraph of complainant's bill, defendant denies that said account is inaccurate, or that any of the fees collected have been omitted therefrom, and states that neither the complainant, nor any representative of his has ever sought information from him concerning same, nor stated any such
16 objection as alleged, or inspected the books and accounts as invited so to do.

And in further answer defendant states, that no retainers were mentioned in said account, for the reason that most of said retainers are according to the contracts between said Earle, and the claimants by him represented, to be deducted from the fees, thereby being returned to the parties who paid them; and for the further reason that by the terms of paragraph five of said contract, between the late William E. Earle and Thomas E. Waggaman, the subject of retainers is not to be considered until final settlement between the parties thereto.

The defendant further denies the allegations in said paragraph contained, concerning the disbursements stated in said account.

Fourth. In answer to the ninth paragraph, the defendant says that the allegations contained therein are wholly false and untrue, and avers the fact to be that he offered to adjust any matters of difference between the parties to this action, in any manner that may by the complainant herein, or his counsel be suggested.

And in further answer defendant submits that he is now, and at all times has been ready and willing to do whatever may be necessary in the premises.

Wherefore, having fully answered, defendant prays that the Bill be dismissed and that he may go hence with his proper costs.

HENRY M. EARLE,
Administrator d. b. n. c. t. a. of William E. Earle.

JOHN C. GITTINGS,
JOHN J. LORDAN,
Solicitors for Defendant.

17 DISTRICT OF COLUMBIA, *ss:*

I, Henry M. Earle, being first duly sworn according to law deposes and says: I have read the foregoing answer by me subscribed as administrator, and the facts therein stated as true are personally known to me to be true, and those stated upon information and belief I believe to be true.

HENRY M. EARLE.

Sworn and subscribed to before me this 2nd day of March, 1901.
[SEAL.] JOHN R. SHIELDS,
Notary Public, D. C.

Replication.

Filed April 26, 1901.

Supreme Court of the District of Columbia.

Equity. No. 21962.

THOS. E. WAGGAMAN, Adm'r, &c.,
vs.
HENRY M. EARLE, Adm'r, &c.

The complainant hereby joins issue in the answer of the defendant.

IRVING WILLIAMSON,
Sol'r for Compl't.

18 *Mandate of Court of Appeals.*

Filed June 13, 1905.

UNITED STATES OF AMERICA, *ss:*

[SEAL.] The President of the United States of America to the honorable the justices of the supreme court of the District of Columbia, Greeting:

Whereas, lately in the Supreme Court of the District of Columbia, before you, or some of you, in a cause between Thomas E. Waggaman, Administrator *de bonis non* with the will annexed of James H. Causten, deceased, complainant, and Henry M. Earle, Administrator *de bonis non* with the will annexed of William E. Earle, deceased, defendant, Equity No. 21962, wherein the decree of the said Supreme Court entered in said cause on the 26th day of March, A. D. 1905, is in the following words, viz:

"This cause came on to be heard at this term upon exceptions by the complainant and the defendant to the report of the auditor filed herein, November 13th, 1902, and being argued by counsel for the

respective parties and submitted, it is this 26th day of March, 1903, adjudged, ordered and decreed that all of said exceptions be and the same are hereby, overruled; and that said report of the auditor be and the same is hereby ratified and confirmed.

By the Court:

A. B. HAGNER,
Asso. Justice."

as by the inspection of the transcript of the record of the said Supreme Court, which was brought into the Court of Appeals of the District of Columbia by virtue of an appeal, agreeably to the Act of Congress in such case made and provided fully and at large appears.

19 And whereas, in the present term of April, in the year of our Lord one thousand nine hundred and five, the said cause came on to be heard before the said Court of Appeals on the said transcript of record on appeal and cross appeal and was *agreed* by counsel:

On consideration whereof, It is now here ordered adjudged and decreed by this Court that the decree of the said Supreme Court in this cause be, and the same is hereby, reversed with costs against the defendant Earle; and that the said complainant Thomas E. Waggaman Administrator *de bonis non* with the will annexed of James H. Causten, deceased, recover against the said defendant One hundred and forty-three dollars and eight cents for his costs herein expended and have execution therefor.

And it is further ordered that this cause be and the same is hereby remanded to the said Supreme Court with directions to enter a decree in accordance with the opinion of this Court.

MAY 23, 1905.

You, therefore, are hereby commanded that such execution and further proceedings be had in this cause, in conformity with the opinion and decree of this Court as according to right and justice and the laws of the United States ought to be had, the said appeal notwithstanding.

Witness the Honorable Seth Shepard, Chief Justice of said Court of Appeals, the 13th day of June, in the year of our Lord one thousand nine hundred and five.

HENRY W. HODGES,
Clerk of the Court of Appeals of the District of Columbia.

Costs of Complainant, Waggaman, Adm.:

Clerk	$15.45
Attorney	5.00
Printing Record	$122.63
	$143.08

20 *Decree Remanding Cause to Auditor.*

Filed December 20, 1905.

In the Supreme Court of the District of Columbia.

Equity. No. 21962, Doc. 49.

THOMAS E. WAGGAMAN, Administrator, etc.,
vs.
HENRY M. EARLE, Administrator, etc.

In accordance with the mandate of the Court of Appeals of the District of Columbia, filed in this cause on June 13, 1905, it is by this Court this 20th day of December, 1905, adjudged, ordered and decreed that the sixth, seventh and eighth exceptions filed by the Complainant to the Auditor's report filed in this cause on November 13, 1902, be, and the same hereby are sustained.

It is further adjudged, ordered and decreed that this cause be, and it hereby is remanded to the Auditor with instructions to restate the account between the parties to this cause in accordance with this decree, and the Auditor is hereby directed to comply with this order with all convenient speed.

WENDELL P. STAFFORD, *Justice.*

O. K.
M. J. C.
E. T. T.

21 *Suggestion of Death of the Complainant & Motion to Substitute.*

Filed April 8, 1907.

In the Supreme Court of the District of Columbia.

Equity. No. 21962.

THOMAS E. WAGGAMAN, Administrator *de bonis non*, with the Will Annexed, of James H. Causten, Deceased, Complainant,
vs.
HENRY M. EARLE, Administrator *de bonis non*, with the Will Annexed, of William E. Earle, Deceased, Defendant.

Now come T. Percy Myers and John J. Hamilton, Administrators *d. b. n. c. t. a.* of James H. Causten, deceased, by M. J. Colbert, S. T. Thomas and T. Percy Myers, their Solicitors, and suggest to the Court that the Complainant herein Thomas E. Waggaman as Administrator *d. b. n. c. t. a.* of James H. Causten, deceased, departed this life on or about June 27, 1906; and move the Court that they

as Administrators, etc., aforesaid may be substituted as Complainants herein in the place and stead of said Thomas E. Waggaman, deceased, as Administrator, etc. aforesaid.

M. J. COLBERT,
S. T. THOMAS,
T. PERCY MYERS,
Solicitors for T. Percy Myers and John J. Hamilton, Administrators d. b. n. c. t. a. of James H. Causten, Deceased.

22 *Auditor's Report.*

Filed April 30, 1907.

In the Supreme Court of the District of Columbia.

Equity. 21962.

THOMAS E. WAGGAMAN, Administrator,
vs.
HENRY M. EARLE, Administrator.

This cause is referred to me to restate the account in accordance with the mandate and opinion of the Court of Appeals. After due notice I proceeded with the reference.

In the schedule herewith, I have set forth the net balance of the fees collected by the defendant as said balance appears in the report filed November 13th, 1902, and have added thereto the items of credit allowed in the said report and which credits are excluded by the mandate and opinion of the Court of Appeals.

I have then stated the portion of the said net fees as corrected, payable to the estate of James H. Causten under the contract set forth in the Complainant's Exhibit A, to the original bill of complaint.

Auditor's fees, $15.00.

JAS. G. PAYNE, *Auditor.*

23 The Estate of William E. Earle in Account with the Estate of James H. Causten, Restated in Accordance with the Decree and Mandate of the Court of Appeals.

DR.

To net balance of fees received by the estate of William E. Earle as per report of Auditor filed November 13th, 1902		29,848.82
Add credit allowed in said former report and excluded by decree and mandate of Court of Appeals as follows:		
" Omer D. Conger & Son, For legal services before committees	2,000.00	
" Philip B. Thompson, The same	2,500.00	
" Dudley Michener, For same	2,000.00	
		6,500.00
		$36,348.82
Payable to the estate of James H. Causten, Twenty-five per cent	9,087.20	

JAS. G. PAYNE, *Auditor.*

24 *Exceptions to the Report of Auditor.*

Filed May 7, 1907.

In the Supreme Court of the District of Columbia.

Equity. No. 21962.

THOMAS E. WAGGAMAN, Adm. *d. b. n. c. t. a.*, Estate of James H. Causten, Deceased, Complainant,

vs.

HENRY M. EARLE, Adm. *d. b. n. c. t. a.*, Estate of William E. Earle, Deceased, Defendant.

Now comes the defendant, Henry M. Earle, administrator of William E. Earle, deceased, and files the following exceptions to the report of the Auditor of this Court filed in the above entitled cause on April —, 1907.

First. Because the Auditor in and by his report has refused to allow as a credit to defendant the payments made by the late William E. Earle for legal services to Omer D. Conger & Son the sum of $2000; Philip B. Thompson $2500 and Dudley & Michener the sum of $2000; as set forth in his schedule accompanying said report; and as ground for this exception respectfully refers to the several

grounds set forth in support of the first exception filed by him to the first Report of said Auditor filed in this cause December 10th 1902.

Second. Because the Auditor in and by his report, and the schedule attached thereto, has found there is payable to the estate of James H. Causten $9,087.20, when in fact by a proper allowance to the defendant of the legal credits he is in law entitled to, there is only $2,879.57 due.

HENRY E. EARLE,
By J. C. G.,
Adm. Estate of Wm. E. Earle, Dec'd.

25 I hereby certify that I am counsel for the defendant in the above entitled cause, Henry M. Earle, Administrator of Wm. E. Earle, deceased, and that in my opinion the matters of law stated in the foregoing exceptions to the auditor's report are well founded in law.

JOHN C. GITTINGS,
Solicitor for Defendant.

CITY OF NEW YORK, *State of New York, ss:*

I, Henry M. Earle, being first duly sworn, on oath do say that I have read the foregoing exceptions and the facts stated in said exceptions as true, I know to be true, and those stated on information and belief I believe to be true; and I further state that said exceptions are not filed for delay.

HENRY M. EARLE.

Sworn and subscribed to before me this 3 day of May, 1907.
LEWIS EARLE,
Notary Public, N. Y. County.

26 *Decree.*

Filed May 7, 1907.

In the Supreme Court of the District of Columbia.

Equity. No. 21962.

THOMAS E. WAGGAMAN, Adm. *d. b. n. c. t. a.*, Estate of James H. Causten, Deceased, Complainant,
vs.
HENRY M. EARLE, Adm. *d. b. n. c. t. a.*, Estate of William E. Earle, Deceased, Defendant.

This cause coming on to be heard on the Auditor's Report filed herein on April 30th, 1907, and the exceptions of the defendant thereto, and the same being considered by the Court, it is this 7th day of May, A. D. 1907, by the Court, adjudged, ordered and de-

creed: that the said exceptions of the defendant be, and the same hereby are, overruled; and that said Auditor's report be, and the same hereby is, ratified and confirmed.

It is further ordered: that the defendant, Henry M. Earle, Administrator *de bonis non cum testamento annexo* of William E. Earle, deceased, pay to T. Percy Myers and John J. Hamilton, Administrators *de bonis non cum testamento annexo* of James H. Causten, deceased, substituted complainants herein, on or before the 15th day of May, A. D. 1907, the sum of Nine thousand and eighty-seven 20/100 dollars and costs; otherwise said complainants to have execution for the same as at law.

ASHLEY M. GOULD, *Justice.*

27 The defendant notes an appeal to the Court of Appeals, from the above decree and bond for costs is hereby fixed at one hundred dollars.

ASHLEY M. GOULD, *Justice.*

Memorandum.

May 21, 1907.—Appeal bond filed.

Directions to Clerk for Preparation of Transcript of Record.

Filed May 25, 1907.

In the Supreme Court of the District of Columbia.

Equity. No. 21962.

THOMAS E. WAGGAMAN, Administrator *de bonis non*, with the Will Annexed, of James H. Causten, Deceased, Complainant,

vs.

HENRY M. EARLE, Administrator *de bonis non*, with the Will Annexed, of William E. Earle, Deceased, Defendant.

John R. Young, Esq., clerk:

The Clerk will please make up the record for the Court of Appeals in the above entitled case and include therein the following pleadings and papers and no other:

1. Bill of Complaint and Exhibit A.
2. Answer.
3. Replication.

28 4. Mandate of Court of Appeals.

5. Order of Reference on Mandate.
6. Auditor's Report of April 30th, 1907.

6½. Defendant's exceptions to Auditor's Report of April 30th/07.

7. Final decree.
8. Appeal therefrom and bond.

JOHN C. GITTINGS,
Sol'r for Def't.
T. PERCY MYERS,
Sol'r for Complainant.

We hereby stipulate and agree that in view of other record now in the Supreme Court of the United States the above are the only pleadings and papers essential to a proper disposition of said cause.

JOHN C. GITTINGS,
Sol'r for Def't.
T. PERCY MYERS,
Sol'r for Complainant.

29 Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA, *District of Columbia, ss:*

I, John R. Young, Clerk of the Supreme Court of the District of Columbia, do hereby certify the foregoing pages numbered from 1 to 29, both inclusive, to be a true and correct transcript of the record, according to directions of counsel herein filed, copy of which is made part of this transcript, in cause No. 21962, Equity, wherein Henry M. Earle, Administrator, &c., is Complainant, and T. Percy Myers, *et al.*, Administrators, &c., are Defendants, as the same remains upon the files and of record in said court.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court, at Washington, in said District, this 8th day of June, A. D. 1907.

(Seal of the Supreme Court of the District of Columbia.)

JOHN R. YOUNG, *Clerk.*

30 [Endorsed:] District of Columbia supreme court. No. 1794. Henry M. Earle, Administrator, &c., Appellant, *vs.* T. Percy Myers *et al.*, Administrators, &c. Court of Appeals, District of Columbia. Filed Jun- 10, 1907. Henry W. Hodges, clerk.

31 THURSDAY, *June 13th, A. D.* 1907.

No. 1794.

HENRY M. EARLE, Adm. *d. b. n. c. t. a.*, Estate of William E. Earle, Deceased, Appellant,
vs.
T. PERCY MYERS and JOHN J. HAMILTON, Adms. *d. b. n. c. t. a.*, Estate of James H. Causten, Deceased.

Stipulation Between Counsel.

It is hereby stipulated and agreed by and between John C. Gittings and T. Percy Myers, solicitors for all the parties, that owing to the absence of the Junior Associate Justice, that this cause be heard and determined by the Chief Justice and the Senior Associate Justice.

JOHN C. GITTINGS.
T. PERCY MYERS.

June 13, 1907.

No. 1794.

HENRY M. EARLE, Administrator *de Bonis non, cum Testamento Annexo*, of William E. Earle, Deceased, Appellant,

vs.

T. PERCY MYERS and JOHN J. HAMILTON, Administrators *de Bonis non, cum Testamento Annexo*, of James H. Causten, Deceased.

The above entitled cause was submitted to the consideration of the Court on the transcript of record and the appellant's motion to affirm, by Mr. J. C. Gittings, attorney for the appellant, and by Mr. T. Percy Myers, attorney for the appellees.

32 No. 1794.

HENRY M. EARLE, Administrator *de Bonis non, cum Testamento Annexo*, of William E. Earle, Deceased, Appellant,

vs.

T. PERCY MYERS and JOHN J. HAMILTON, Administrators *de Bonis non, cum Testamento Annexo*, of James H. Causten, Deceased.

Opinion.

(Mr. Chief Justice SHEPARD delivered the opinion of the Court:)

On a former appeal the decree in this case was reversed and the cause remanded for further proceedings in accordance with the opinion then rendered. (25 App. D. C., 582, *sub. nom.* Waggaman.) The Auditor's report having been made and final decree entered in accordance with the mandate of this Court, the same is affirmed with costs.

Affirmed.

33 No. 1794, April Term, 1907.

HENRY M. EARLE, Administrator *de Bonis non, cum Testamento Annexo*, of William E. Earle, Deceased, Appellant,

vs.

T. PERCY MYERS and JOHN J. HAMILTON, Administrators *de Bonis non, cum Testamento Annexo*, of James H. Causten, Deceased.

Appeal from the Supreme Court of the District of Columbia.

This cause came on to be heard on the transcript of the record from the Supreme Court of the District of Columbia, and on a motion to affirm which was argued by counsel. On consideration whereof, It is now here ordered, adjudged, and decreed by this Court that the decree of the said Supreme Court in this cause be, and the same is hereby, affirmed with costs.

Per MR. CHIEF JUSTICE SHEPARD,
June 13, 1907.

No. 1794.

HENRY M. EARLE, Administrator *de Bonis non, cum Testamento Annexo*, of William E. Earle, Deceased, Appellant,

vs.

T. PERCY MYERS and JOHN J. HAMILTON, Administrators *de Bonis non, cum Testamento Annexo*, of James H. Causten, Deceased.

On motion of Mr. J. C. Gittings, attorney for the appellant in the above entitled cause, It is ordered by the Court that said appellant be allowed an appeal to the Supreme Court of the United States, and the bond for costs is fixed at the sum of three hundred dollars.

34 (*Bond on Appeal.*)

Know all Men by these Presents, That we, Henry M. Earle administrator *d. b. n. c. t. a.* of the estate of William E. Earle, deceased, as principal, and Peyton D. Vinson, as surety, are held and firmly bound unto T. Percy Myers and Michael J. Colbert, administrators, *d. b. n. c. t. a.* of the estate of James H. Causten, deceased, in the full and just sum of Three hundred 00/100 dollars, to be paid to the said T. Percy Myers and Michael J. Colbert, adm. etc., or their certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 15th day of June, in the year of our Lord one thousand nine hundred and seven.

Whereas, lately at a Court of Appeals of the District of Columbia in a suit depending in said Court, between said Henry M. Earle, adm. etc., against T. Percy Myers and Michael Colbert, administrators, etc., a decree was rendered against the said Henry M. Earle, administrator, etc., and the said Henry M. Earle, administrator, etc., having prayed and obtained an appeal to the Supreme Court of the United States to reverse the decree in the aforesaid suit, and a citation directed to the said T. Percy Myers and Michael J. Colbert, administrators, etc., citing and admonishing them to be and appear at the Supreme Court of the United States, at Washington, within thirty days from the date thereof;

Now, the condition of the above obligation is such, That if the said Henry M. Earle, administrator, etc., shall prosecute said appeal to effect, and answer all costs if he fail to make his plea good, then the above obligation to be void; else to remain in full force and virtue.

HENRY M. EARLE, [SEAL.]
Adm'r Est. W. E. Earle.
PEYTON D. VINSON. [SEAL.]

Sealed and delivered in presence of—

——— ———.

O. K.
T. P. M.

Approved by—
SETH SHEPARD,
Chief Justice Court of Appeals of the District of Columbia.

[Endorsed:] No. 1794. Henry M. Earle, Administrator *d. b. n. c. t. a.* of William E. Earle, deceased, appellant, *vs.* T. Percy Myers and John J. Hamilton *a. d. b. n. c. t. a.* of James H. Causten, deceased. Bond on appeal to Supreme Court U. S. Court of Appeals, District of Columbia. Filed Jun- 27, 1907. Henry W. Hodges, clerk.

35 UNITED STATES OF AMERICA, *ss:*

To T. Percy Myers and John J. Hamilton, administrators *de bonis non, cum testamento annexo,* of James H. Causten, deceased, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date hereof, pursuant to an order allowing an appeal, filed in the Clerk's Office of the Court of Appeals of the District of Columbia, wherein Henry M. Earle, Administrator *de bonis non cum testamento annexo* of William E. Earle, deceased, is appellant and you are appellees, to show cause, if any there be, why the decree rendered against the appellant, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Seth Shepard, Chief Justice of the Court of Appeals of the District of Columbia, this 27th day of June, in the year of our Lord one thousand nine hundred and seven.

SETH SHEPARD,
Chief Justice of the Court of Appeals of the District of Columbia.

Service accepted.

T. PERCY MYERS,
Attorney for Appellees.

June 27 / 07.

[Endorsed:] Court of Appeals, District of Columbia. Filed Jun- 27, 1907. Henry W. Hodges, clerk.

36 Court of Appeals of the District of Columbia.

I, Henry W. Hodges, Clerk of the Court of Appeals of the District of Columbia, do hereby certify that the foregoing typewritten pages numbered from 1 to 35 inclusive, contain a true copy of the transcript of record and proceedings of said Court of Appeals in the case of Henry M. Earle, Administrator *de bonis non cum testamento annexo* of William E. Earle, deceased, Appellant, *vs.* T. Percy Myers and John J. Hamilton, Administrators *de bonis non cum testamento annexo* of James H. Causten, deceased, No. 1794, April Term, 1907, as the same remain upon the files and records of said Court of Appeals.

In testimony whereof I hereunto subscribe my name and affix the seal of said Court of Appeals, at the City of Washington, this 27th day of June A. D. 1907.

[Seal Court of Appeals, District of Columbia.]

HENRY W. HODGES,
Clerk of the Court of Appeals of the District of Columbia.

Endorsed on cover: File No. 20,791. District of Columbia Court of Appeals. Term No. 388. Henry M. Earle, administrator *de bonis non cum testamento annexo* of William E. Earle, deceased, appellant, *vs.* T. Percy Myers and John J. Hamilton, administrators *de bonis non cum testamento annexo* of James H. Causten, deceased. Filed July 10th, 1907. File No. 20,791.

Supreme Court, U. S.
FILED.
OCT 12 1907
JAMES H. McKENNEY,
CLERK.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1907.

Nos. 12 and 388.

HENRY M. EARLE, ADMINISTRATOR DE BONIS NON, WITH THE WILL ANNEXED, OF WILLIAM E. EARLE, DECEASED, APPELLANT,

vs.

T. PERCY MYERS AND JOHN J. HAMILTON, ADMINISTRATORS DE BONIS NON, WITH THE WILL ANNEXED, OF JAMES H. CAUSTEN, DECEASED, APPELLEES.

BRIEF ON BEHALF OF APPELLANT.

HENRY E. DAVIS,
JOHN C. GITTINGS,
For the Appellant.

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C. 28226

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1907.

Nos 12 and 388.

HENRY M. EARLE, ADMINISTRATOR DE BONIS NON, WITH THE WILL ANNEXED, OF WILLIAM E. EARLE, DECEASED, APPELLANT,

vs.

T. PERCY MYERS AND JOHN J. HAMILTON, ADMINISTRATORS DE BONIS NON, WITH THE WILL ANNEXED, OF JAMES H. CAUSTEN, DECEASED, APPELLEES.

BRIEF ON BEHALF OF APPELLANT.

In view of the fact that the records in No. 12 and No. 388 relate to but one case, as will presently be pointed out, we have asked that they be consolidated and heard as one, and this brief is prepared on the assumption that the stipulation of counsel to that effect will meet with the court's approval. Unless otherwise indicated, the references are to the record in No. 12; and whenever Earle is so mentioned, William E. Earle is meant.

I.

Statement of the Case.

On January 2, 1901, Thomas E. Waggaman, administrator *d. b. n. c. t. a.* of the estate of James H. Causten, filed in the Supreme Court of the District of Columbia his bill

against the defendant for an accounting of certain moneys received by the late William E. Earle in his lifetime, and by the defendant after his death, as fees for professional services rendered by the said William E. Earle, as an attorney-at-law, to certain French Spoliations claimants.

The bill alleges a right to such an accounting by virtue of a certain contract made by the late William E. Earle, under date of June 12, 1885, wherein the said Earle agreed to pay to the complainant, as administrator of the Causten estate, 25 per cent. of his net fees received by him for professional services rendered to such claimants; and that he would keep proper books of account showing his disbursements and the fees received, which books were to be open to inspection by complainant at all times, and a settlement to be made every six months.

The bill further alleges that Earle, prior to his death, in August, 1894, received certain fees and had made certain expenditures; that upon demand being made by complainant for settlement Earle claimed that his disbursements exceeded the fees received; that upon examining the books of account complainant notified Earle that certain items therein, such as office expenses and attorneys' fees, were not legitimate and proper charges, and that he would contest same; that at that time Earle agreed that when other fees had been collected, or upon a final accounting, they could settle these differences by agreement or otherwise by legal proceedings; that after the death of said Earle complainant requested the defendant for a full accounting and settlement under said contract, which defendant from time to time promised to make, but did not until November 3, 1900, when there was submitted an account of about thirty typewritten pages, which showed the fees received by William E. Earle in his lifetime and by his estate after his death to have been $70,909.27, and claimed disbursements for expenses of $62,445.46, leaving the net fees $8,463.81; that complainant disputed this account and refused to accept

same; and, on information and belief, that defendant in said account has failed to charge himself with all the fees for which the late William E. Earle and himself are responsible under the terms of the contract; and that said account is also incorrect in that it embraces items of expense which are illegal, and should not be permitted, and for items of expense not properly chargeable against the complainant under the contract (Rec., pp. 2, 3).

Defendant, answering the bill, admits the existence of the contract, and that the late William E. Earle prosecuted certain French Spoliations claims and received certain fees and made certain expenditures, and that no payment was made to complainant on account of the contract, and that it was agreed by and between complainant and the late William E. Earle that when other fees had been paid so as to make a partial accounting possible all differences would be settled by agreement, or otherwise between the parties, and the matter so stood until defendant's appointment and qualification as administrator in 1895 (but does not admit there were any differences existing between William E. Earle, in his lifetime, and complainant concerning payments made to attorneys in connection with obtaining legislation). Defendant positively denies that any demands were ever made upon him by the complainant for any settlement under the contract at the time alleged, and alleges that the allegation that an account was promised by him from time to time to about November 3, 1900, is absolutely false and untrue, and that soon after the appropriation act of March 4, 1899, complainant demanded an accounting, which defendant promised to make, and did make as soon as was practicable, the same being delayed through considerable litigation with other attorneys, who had interest in the fees. Defendant denies that the account is inaccurate, or that any fees collected by him were omitted therefrom, or that any improper disbursements were contained in said account (Rec., pp. 7-9).

By consent the case was referred to the auditor to state the account upon the pleadings and proof produced before him (Rec., p. 10). After taking considerable testimony the auditor filed his report and account, allowing the complainant $7,462.20 (Rec., pp. 11-17), to which both complainant and defendant filed exceptions (Rec., pp. 187-193). The court, overruling all of the exceptions and confirming the auditor's report, cross-appeals were taken to the Court of Appeals of the District of Columbia (Rec., pp. 194-195), complainant's appeal being numbered 1422 and defendant's 1423.

Errors assigned by the respective appellants in their cross-appeals were based upon their respective exceptions to the auditor's report. The cross-appeals were heard as one case; and upon review the Court of Appeals affirmed the trial court's rulings upon all of defendant's exceptions, but held certain of complainant's exceptions to have been well taken, and reversed the cause with directions to the trial court to reform its order in that regard only (Rec., p. 206). From this decree defendant prayed an appeal to this court, which was duly allowed, and is No. 12 of the present trial docket.

There being doubt in the minds of counsel whether the decree from which cross-appeals were taken was a final decree, also whether the decree of the Court of Appeals, although final in substance, was such a decree as this court would hold appealable, when Myers and Hamilton had been appointed Waggaman's successors and substituted as complainants in this cause, the mandate of the Court of Appeals was presented to the trial court, which referred the cause to the auditor to reform the account in accordance therewith; and when this was done and a report filed, defendant filed exceptions thereto, and upon their being overruled and the auditor's report confirmed and another decree entered (which was final in both form and substance), an appeal by the defendant was taken therefrom to the Court of Appeals and there affirmed; and from the Court of Appeals' order of

affirmance an appeal to this court was prayed and allowed, and is No. 388 of the present trial docket.

The record in No. 12 containing all the proceedings in the case except those subsequent to the mandate of the Court of Appeals, by stipulation of counsel only subsequent proceedings have been printed in the record of No. 388.

For more than fifty years prior to the year 1885 there had been considerable agitation in Congress for the payment of what was known as "the French Spoliations claims."

In January, 1885, Congress passed an act making the Court of Claims the tribunal to hear and determine the facts in relation to these claims, and designated a certain fixed time in which all claimants must file their petitions in said court (Act January 20, 1885, U. S. Stat. at Large, vol. 23, p. 283).

The late James H. Causten, who in his lifetime had advocated the payment of these claims by Congress, had collected a great deal of data and documents and what he termed "records" relating to them. At the time Congress passed the above act, these papers, known as the "Causten Records," were in the possession of William E. Earle, then a member of the bar of this court and of the Court of Claims, and who represented as attorney many of the claimants. Desiring to remain in control of the "Causten Records," Earle, with this end in view, entered into a contract with Waggaman, the then Causten administrator.

This contract, which was in writing, but not under seal, provided, among other things, that Earle should keep true books of account, in which were to be entered all the retainers and fees received by him and all expenses attending the prosecution of the claims, which books of account were to be open at all times to the inspection of Waggaman or his successor in office.

Paragraph 3 of this contract provided that said Earle should pay Waggaman 25 per cent. of all fees *received by*

him, after deducting therefrom the proper expenses incurred by him since the passage of the act of Congress referring the cases to the Court of Claims, "such as clerk hire, printing, advertising, office rent, and *compensation of other attorneys necessarily associated with him in whose compensation he does not share.*" And the contract further provided that settlements between the parties should be made every six months, and the proportionate part of the fees due Waggaman or his successor in office be paid at such settlements. Paragraph 5 of the contract provided that all the retainers were to be used by Earle and not accounted for until a final settlement (Rec., pp. 5-7).

Shortly after entering into the contract with Causten's administrator, Earle was employed by other claimants, and also associated by other attorneys in the prosecution of claims they represented. The sole consideration for these contracts with the several claimants and attorneys who had associated him with them moving from Earle was the rendering of his personal services as attorney-at-law, for which he was to receive a contingent fee, based on the amount appropriated by Congress and actually collected. (See Ropes contract, Rec., p. 144; Stevens contract, Rec., pp. 198-199, and 2d paragraph of contract with Baltimore attorneys, Rec., p. 148; also testimony of W. T. S. Curtis, Rec., pp. 89 to 94, inclusive.)

The act of January 20, 1885, provided that all claimants should file their petitions in the Court of Claims prior to the 1st of January, 1887. Earle was employed in between 2,000 and 3,000 cases, and before the year 1887 had filed in the Court of Claims petitions in every case. This entailed an enormous amount of labor, and required the employment of a large force of clerks and associate attorneys. It appears from Curtis' testimony that he was employed by Earle early in 1885 to block out the petitions, which were required to be first engrossed and then printed, and his entire time was employed in obtaining data by searching the records of the State Department and the records of the different custom-

houses of the United States and the papers known as the "Causten Records." There was also a voluminous correspondence to be attended to. Earle also found it necessary to employ some one who could translate the French and Spanish dialect known as the West Indian patois, as a large number of the records and documents containing evidence were in this dialect (Rec., pp. 55-56).

Earle devoted his time to trying cases before the Court of Claims; and as early as December, 1886, awards had been made by the court in a large number and certified to Congress for payment. From that time repeated endeavors were made at every session of Congress by Earle up to December, 1889, without meeting with any success. However, not being discouraged, Earle continued the prosecution of the other cases before the Court of Claims, securing awards as fast as possible and having them certified to Congress. From time to time during these years Earle employed other attorneys to assist him in writing arguments and preparing briefs to be presented before the several committees of Congress, he then believing, as all the other attorneys interested in the claims believed, that if they could once secure from Congress an appropriation for the payment of the claims then certified, there would be no difficulty in securing future appropriations for the rest. So, increasing his endeavors in this connection from time to time, he employed the firm of Omar D. Conger & Son, Hon. Philip B. Thompson, Wm. S. Hutchins, Esq., Frank P. Morgan, Esq., Hon. Henry W. Worthington, Robert B. Bradford, Esq., Hon. H. D. Money, the firm of Dudley & Michener, and Hon. C. R. Shelley as special attorneys to assist him in preparing briefs and to make arguments before the different committees of the House and Senate, and through the united endeavors of all these finally secured from Congress an appropriation on March 3, 1891.

After the securing of this appropriation Waggaman, the administrator of the Causten estate, and some of the heirs, Miss Josephine Young and Mr. Robert Shriver, called upon

Earle, and were, according to their testimony (Rec., pp. 50, 80 and 83), then notified by him that there would be no money to be distributed out of his fees secured from this appropriation, owing to the enormous expense he had been put to up to that time, he at the same time informing them that this opened the way to future appropriations, from which every one would be amply paid. The books of account, which were at that time exhibited to Waggaman and others interested, showed that the total amount collected as fees by William E. Earle was $38,745.63, and the expenses in carrying the claims amounted to $57,318.66; and also that there had been certified to Congress at that time awards from which Earle would realize fees amounting to nearly $50,000, provided that an appropriation were made in 1893.

There was no dispute between Earle and Waggaman as to the legitimacy of the expenses incurred by Earle for special counsel at the time of Earle's death, in August, 1904. The only one who did object to the fees paid special counsel in Earle's lifetime was Miss Josephine Young, which objection, of course, amounted to nothing, as shown by the stand taken by Earle. (See letters, Rec., pp. 180-182.) Waggaman made no objection, although he pretends to have done so in several letters written to Earle at this period, yet, when given the privilege of producing copies of any such letters, the one letter which is produced absolutely shows a contrary position taken by him at that time (Rec., pp. 79-80). In reference to the suggestions made by Waggaman in this letter we find by the testimony of Pickett that the books and vouchers were immediately put in the condition suggested, and that he (Waggaman) afterwards called and went over them and never thereafter questioned the account. (See Pickett's testimony, Rec., p. 48.)

By reason of the death of William E. Earle all of his contracts with the claimants terminated. Of this fact Waggaman was as much aware as the Earle interests. The various claimants, as stated by Curtis in his testimony (Rec., pp.

89-91), being clamorous for their cases to be proceeded with, in order to prevent other attorneys getting hold of the cases on account of Earle's death, he and his associate, Pickett, entered into correspondence with them and secured contracts and powers of attorney in the names of themselves and Henry M. Earle, the last named at the time not being the administrator of his father's estate. These three—Curtis, Pickett, and Henry M. Earle—had long been associated with William E. Earle in the prosecution of these cases, and all were willing to acknowledge Earle's estate to be interested in them notwithstanding his death; wherefore, under the authorization of Earle's widow and executrix to her son, they entered into the agreement set forth in the record (pp. 182-186), under which the three were to continue the prosecution of the claims and apportion the fees originally agreed to be paid Earle as follows: In certain cases 30 per cent. and in others 50 per cent. to Curtis and Pickett; they to bear all expenses proportionately. The agreement does not state in terms who should receive the remaining 70 per cent. and 50 per cent., respectively, whether Henry M. Earle or his mother, executrix.

New powers of attorney and contracts having been executed by the claimants, Curtis and Pickett, both of whom were members of the bar of the Court of Claims (Rec., p. 146), entered their appearance and continued the prosecution, both in the Court of Claims and before Congress, of the cases in which William E. Earle had formerly been attorney; all of which was not only a matter of record in the Court of Claims, but also well known at the time to Waggaman, who never protested in any manner.

That Earle's contracts died with him is beyond all doubt. Under these contracts with the claimants, Earle contracted to render his personal services as an attorney-at-law upon a contingent fee, and the subject-matter of his contract with the Causten administrator was a division of these contingent

fees to be received from the claimants. But for the decision of the auditor having been sustained by the two courts below, it would seem almost too plain for argument that there was no liability upon the Earle estate to account for the 1899 appropriation. It has always been held that a contract the performance of which depended upon personal capacity of the parties is discharged by either death or incapacitating illness. A leading case almost universally cited by leading text books is that of Robinson *vs.* Davidson, Law Rep., 6 Ex., 269. In that case the defendant had agreed to play the piano at a concert to be given by the complainant on a specified day. Upon the day in question she was unable to perform on account of illness. The complainant sued her for breach of contract, but failed to recover. Bramwell, B., said:

"This is a contract to perform services which no deputy could perform and which, in case of death, could not be performed by the executors of the deceased; and I am of opinion that by virtue of the terms of the original bargain incapacity either of body or mind in the performance, without default on his or her part, is an excuse for non-performance. Of course, the parties might expressly contract that incapacity should not excuse and the condition of health being annexed to their agreement. Here they have not done so; and as they have been silent upon that point the contract must in my judgment be taken to have been conditional and not absolute."

See—

Farrell *vs.* Wilson, L. R., 4 C. P., 744.
Scully *vs.* Kirkpatrick, 79 Pa. St., 324.
Allen *vs.* Baker, 86 N. C., 91.
Marbel *vs.* Phillips, 162 Mass., 399.
Baxter *vs.* Burfield, 3 Stoa., 1266.
Stubbs *vs.* Holywell Rly., L. R., 2 Ex., 311.
Lyon *vs.* Pollard, 20 Wall., 403.

In 1895, after the defendant's appointment as administrator of his father's estate, Congress passed a second bill appropriating for the payment of the claims, but this bill

was vetoed by President Cleveland, and nothing further was heard from Waggaman until some time after the appropriation act of March 3, 1899. During all the intervening years no demand had been made upon the Earle estate for an accounting of the fees received under the act of 1891, nor was any claim filed against the Earle estate, yet the books kept by Earle were at all times accessible to Waggaman for the purposes of securing the data upon which to base any claim he might have against the estate.

Shortly after the act of March 3, 1899, a controversy arose between the Baltimore attorneys associated with Earle as to the rights of the Earle estate under their agreement (Agreement, Rec., pp. 146-150), and it finally became necessary for the defendant, Henry M. Earle, for the protection of the interest of his father's estate under this agreement, to file a bill in equity to enjoin the Baltimore attorneys from entering their appearance in the Court of Claims and obtaining warrants for payment of claims represented by themselves and Earle jointly (copy of bill, Rec., pp. 152 to 158). A preliminary injunction was obtained against the Baltimore attorneys, and Waggaman intervened in the proceedings (Rec., pp. 169, 170, 171). Finally, by consent of all parties, an agreement was entered into dismissing the equity suit, and the controversy was submitted to arbitration (Order dismissing [illegible], Rec., pp. 175-176). After the award of the arbitrators, at the request of Waggaman, Henry M. Earle rendered him an itemized account, showing expenses and receipts in relation to securing the appropriations of the 3d of March, 1891, and the 3d of March, 1899, which was rejected.

Among the objections of the complainant to the account rendered him by the defendant were credits claimed for payments made by Earle in 1891 to others associated with him and in whose compensation he did not share, namely, Omar D. Conger & Son, Philip B. Thompson, Wm. S. Hutchins,

Frank P. Morgan, Henry W. Worthington, Robert B. Bradford, H. D. Money, C. R. Shelley, and Dudley and Michener; the grounds of the objection to these credits being three:

1st. Want of sufficient proof of the payment of such expenses.

2nd. The character of the proof.

3rd. That even though such payments were actually made the services rendered were of a character contrary to public policy and discountenanced by courts.

The complainant also strenuously objected to the allowance of credit for the 30 per cent. received by Curtis and Pickett for their services, as provided for under the contract of November 23, 1894. The objection was based upon the theory that under the contract with William E. Earle he, Earle, was bound to render these services, and that his death could in no way affect the Causten estate.

The auditor in dealing with these several objections determined as matter of fact that the proof sufficiently established the several payments made by Earle; that the books of account kept by him were evidence of their payment, and that the complainant had knowledge of the contents of the books, as he had examined them upon several occasions; that some of the parties employed and paid being lawyers, who had prepared briefs and arguments and submitted them to several committees of the two houses of Congress having in charge the matter of the appropriation, namely, Omar D. Conger & Son, Philip B. Thompson, and Dudley & Michener, the claim for payments to these should be allowed; but that the payments to the others should be disallowed (Rec., p. 14). The auditor further held as matter of fact that there were no sufficient efforts made by the complainant to secure an accounting from Earle during his lifetime, and that the complainant was therefore subject to the charge of laches for this delay, the defendant being thereby de-

prived of the benefit which might have been realized from the personal evidence of Earle (Rec., p. 15).

The auditor in his report, dealing with the right to the credit claimed by the defendant for the 30 per cent. received by Curtis and Pickett under their contract of November 23, 1904, gave no consideration to the ground of the objection for this payment as urged by complainant. He recognized not only the right, but the necessity for employment of some one by Earle's executrix to continue the prosecution of the cases, but held the amount *paid* Curtis and Pickett to be excessive, in view of the fact that the services rendered, in his opinion, did not require the time and attention of three persons, any one of whom, in his opinion, was competent alone to have rendered the services; and for this reason he, in effect, reformed the contract under which the services were rendered and allowed the defendant a credit of 15 per cent. (Rec., pp. 15-16, Auditor's report).

To the auditor's refusal to allow a credit for each of the payments claimed, and to the auditor's reformation of the contract of November 23, 1904, between the defendant and Curtis and Pickett, the defendant severally excepted, his exceptions and the grounds thereof being set forth in the record (pages 189-193, inclusive), the ultimate result of which has heretofore been set out.

II.

Assignments of Error.

The court below erred:

1st. In holding that appellant is not entitled to a credit in his account for all of the payments made by William E. Earle to the special attorneys employed by him, upon the grounds set forth in appellant's exceptions to the auditor's report (Rec., p. 190), namely:

a. Because they were proper payments under the terms of the agreement between the parties.

b. Because in the books of account kept by Earle, as ordered by the court and incorporated in the agreement between them, these payments were shown to have been made, and the record discloses the fact that Waggaman examined these books of account from time to time during Earle's lifetime and shortly after the payments were made; and the record further discloses that Earle had notified those interested under the agreement that said payments had been made and were for legitimate services, and by reason thereof there was no fund out of the 1891 appropriation for distribution.

c. Because the books of account kept by the order of the court and examined by Waggaman, subsequent to the payment of claims appropriated for by the act of 1891, at the request of Earle, no objection being made to said payments at the time, or within a reasonable time thereafter, constituted in law an account stated.

d. Because the contract between Earle and Waggaman was not under seal, and required an accounting every six months; and the record discloses that Waggaman had been informed and had ascertained from the books, by reason of payments to the special counsel employed to assist in the prosecution of the claims, that there was no fund in Earle's hands for distribution; and Waggaman allowed more than three years during Earle's lifetime and seven years after his death to elapse before filing the present suit.

e. Because the record shows that the 1891 fund was realized from the services rendered by those associated with Earle, and Waggaman could not claim a right to participate in the funds and at the same time in equity and good conscience be heard to say that the services paid for in assisting to secure the fund were illegal and improper.

f. Because the complainant was barred by the statute of limitations from contesting said payments.

g. Because the complainant was guilty of laches.

2d. In affirming the trial court in its overruling of appellant's exception (Rec., p. 191) to that portion of the auditor's first report (Rec., pp. 15-16) relating to the reformation of the contract of November 23, 1894, between Henry M. Earle and Curtis and Pickett, and only allowing one-half of the $15,164.78 received by said Curtis and Pickett for their services, upon the grounds set forth in said exception, namely:

a. That the payments were authorized by the terms of the agreement between Earle and Waggaman.

b. Because as shown by the contracts between Earle and the French Spoliations claimants the same were for contingent fees for professional services, not only to be rendered in securing findings by the Court of Claims, but also in prosecuting the claims to collection, and that by the death of Earle all of his contracts with claimants were ended, and the only interest or claim left to his estate in which Waggaman was entitled to participate at most was a *quantum meruit.*

c. Because under all the surrounding circumstances, as disclosed by the record, the terms of said agreement were reasonable and beneficial.

d. Because the funds here for distribution having been realized by the services performed by Curtis and Pickett under said agreement, it did not lie in Waggaman's mouth, while claiming a right to participate in the fees so realized by virtue of the agreement, to object to its terms more than seven years subsequent to the date of same.

3d. In holding that the estate of Causten was entitled to any accounting by the defendant, or at least to any accounting by him in respect of anything arising after the appropriation of 1891.

III.

ARGUMENT.

1. First Assignment of Error.

As the auditor's report in all respects except one is acquiesced in by the Court of Appeals in its review of the case, we deem it not out of place to quote those portions that deal with the question of the several payments made by Earle to the special attorneys associated with him in the securing of the appropriation of 1891. Upon this point the auditor, among other things, says:

"It is established in proof that these books, such as they are, were kept in accordance with this contract stipulation and were subject to examination or inspection by the complainant or his counsel, and were so examined upon several occasions. * * * I find the claims so credited for the several expenditures presented by the defendant to be sufficiently established.

"There is a further objection to the claims for payment of moneys to the several parties named, for services in efforts to secure the appropriation by Congress of 1891, upon the ground that the employment and payment of parties exclusive for services of that character is contrary to public policy and discountenanced by the courts. On this point I hold that a line must be drawn between the rendition of legal services and those which may be termed the exercise of personal influence or persuasion. In this case some of the parties so employed and paid were lawyers, and it is in proof that by some of them briefs and arguments were prepared and submitted to the several committees of the two houses of Congress having in charge the matter of the appropriation. The claims for these payments I think should be allowed, while the claims for payments for other than legal services should be excluded from allowance, which is the course which I have adopted in this accounting. It is also claimed that the amounts paid for legal services in this respect are excessive, but I think the matter of amount was largely in the discretion of Mr. Earle who was immediately

conversant with the conditions and necessities of the case, and I must presume that he did not willingly pay any unreasonable charges in the premises.

"There is another feature of this case which is not without its right to consideration here, and that is that no determined effort was made by the complainant or those interested under him, to secure an accounting from Mr. Earle during his life time. While Mr. Earle was in default as to the stipulations of the contract requiring timely accounting and payment to the claimant, the latter is subject to the charge of laches for his delay in the prosecution of his rights, whereby the defendant was deprived of the benefit which might have been realized from the personal evidence of Mr. Earle" (Auditor's report, Rec., pp. 14-15).

The Court of Appeals in reviewing the whole case found the only error committed by the auditor to be the allowance of a credit of $6,500 paid to Omar D. Conger & Son, Philip B. Thompson, and Dudley & Michener, and commenting thereon says:

"We find it impossible to read the record without coming to the conclusion that these alleged services were of the kind known as lobbying services. The proof, indeed, in regard to them is of the vagest character, and utterly insufficient in any event to support them as proper charges in this accounting. But so far as it goes, it points unmistakably to those illicit services, personal influence and personal solicitation, which the courts have branded as improper for their consideration, and for which they will not allow recovery. It is a peculiar fact that no one of the persons to whom these several sums are claimed to have been paid were called to testify in regard to them, although they were all accessible and could easily have been summoned. The inference from this omission is not favorable to the defendant's claim for these allowances. * * * There is considerable insistence by the defendant upon the supposed laches of the complainant; that is, his delay in the instituting of proceedings to enforce his claim; and the benefit of the statute of limitations is sought by him, *not in his answer to the bill or anywhere in the pleadings, but only in argument.* But if there are any laches in this case, they are the laches of the defendant rather than of the complainant."

The Court of Appeals is in error in its statement that laches is nowhere claimed in the pleadings, but only in the argument. In fact, the record shows that the specific items of the appellant's account to which objections were made were not disclosed until a great deal of testimony had been taken before the auditor (Rec., p. 54, fol. 97), and the objection to such credits as were disallowed by the auditor was made on the distinct grounds of laches and the statute of limitations (Rec., pp. 189-192).

That the auditor was warranted in holding that the complainant was guilty of laches is a conclusion hard to avoid.

Take the bill and answer and apply the elementary rule of equity, that when an answer under oath denies a material allegation it must be overcome by the testimony of two witnesses, or one witness and pregnant circumstances. Here we have two material allegations: 1st, that certain payments claimed in the account submitted were improper; 2d, that demands were made on defendant from time to time after his appointment as administrator for an account and settlement, which defendant from time to time promised to make, but postponed by the suggestion of various reasons up to November 3, 1890. Both of these allegations are strenuously denied under oath by the defendant in his answer, and there is nothing in the record that could be dignified by the term evidence which supports either allegation. Add to this potent circumstance the fact that there is no dispute in the record that the books of account were always accessible to Waggaman and that he examined them from time to time, and was thoroughly familiar with their contents, and that they in fact showed that Earle had made these several payments to the several attorneys who assisted him in securing the 1891 appropriation. Upon this point Pickett says:

"Q. Was there a book kept by either you or Mr. Earle containing a memorandum of other expenses and the time they were paid? (Other than expenses.)

"A. Yes, there was a book kept showing the amount paid to special attorneys and for clerical services.

"Q. Have you that book here?

"A. Yes, I have it here. (Producing.) This large book contains that account.

"Q. Turn to the pages of that book and designate the pages in which those items are kept.

"Ans. They are kept on pages 27 running to the bottom of 32" (Rec., bottom p. 43 to top p. 44).

"Q. Were these books ever examined by Mr. Waggaman during Mr. William E. Earle's lifetime?

"A. Yes, sir, a number of times.

"Q. Were they always accessible to him?

"A. Yes, sir, always. He had a desk put at his disposal, or services, in the office of Mr. Earle and he examined the books a number of times (Rec., p. 48).

The following is what Waggaman had to say upon this question:

"Q. State what examinations you made from time to time of his books. Mr. Pickett for the defendant claims that you came into Mr. Earle's office several times and examined the books?

"A. I came in several times with Mr. Williamson to examine the books and we found it very difficult to get a satisfactory statement. We found money had been paid to various lawyers at various times and we objected to these payments among other things, in fact we objected to all of it.

"Q. *To whom did you object?*

"A. *I cannot remember the exact parties, to the people in the office who were there,* and I think letters were written about it.

"Cross-examination:

"Q. Did you object to Mr. Pickett?

"A. I do not remember. I know that letters were written about them.

"Q. Can you give the date of any letters?

"A. I think Mr. Williamson has some.

"Mr. Williamson: I have not the letters written to Mr. Earle.

"Witness: I know that objection was made and I know we have letters from the heirs.

"Q. Have you any communication that you received from Mr. Earle in respect to, or in reply to your letters?

"A. I do not know. *I know that the account was not satisfactory and we objected to it.*

"Q. When were these objections interposed?

"A. When we were examining the books.

"Q. How long after the appropriation of 1891 was this?

"A. That I do not know.

"Q. Did you at any time demand any other account of these vouchers?

"A. *To my impression* I demanded several times.

"Q. To whom were these demands made.

"A. My impression is, they were made to Mr. Earle, himself.

"Q. What were the exact items to which you objected?"

This question the complainant failed to answer (Rec., p. 50, fol. 90, p. 51).

Upon the question of any account other than the books having thus been demanded of William E. Earle, or Henry M. Earle, as administrator of his father's estate, prior to 1899, the record shows that counsel for appellant agreed to admit any letter press copies of letters to that effect (Rec., top p. 53), and the only letter produced upon the question is that contained in the record at page 79. This letter does not set forth any claim to any other account to be rendered than the books themselves; nor does it make any pretence of a claim that the items of credit claimed for the sums paid to these several persons have improper charges against the Causten estate. Add to all of this the fact that defendant before the auditor relied upon these books and the examination of them by Waggaman, and the fact that no objection or exception was taken by him in Earle's lifetime constituted an account stated. Upon this point appellant's counsel in offering these books in evidence said:

"The AUDITOR: How far the books offered may be taken as evidence is one that I prefer not to pass upon now. For the present the books will be admitted.

"Mr. Gittings offers the book in evidence for the purpose of showing the receipts and disbursements made by Mr. Earle during his lifetime, these being the books ordered to be kept, by the court, and were open to inspection by the administrator, the other party to the contract, and were examined by him, and no other account or proof of any other account demanded under the appropriation of 1891 in so far as expenses had been incurred by Mr. Earle under that appropriation (Rec., pp. 48-49).

Up to the time of this offer there had not been any specific objection made to any payment on the ground that it was for improper and illegal services. Earle's books at time of his death showed a balance on the wrong side of about $18,000.

This, of course, had to be made up out of the next appropriation. Consequently when appellant's account submitted to Waggaman in 1900 contained a statement of these expenses, and Waggaman refused to abide by it, and in his bill claimed that there were improper charges contained in the account, there was no reason in equity or law that required appellant to plead limitations and laches, to save the right to these defenses when a specific objection was made to a specific credit claimed. It seems to us that the time and place to make these defenses was when the account was being stated, which course the record shows was followed.

But assume that we are wrong in presuming that the right place to raise these defenses was before the auditor. Can it be said that the failure of an administrator to specifically plead such defenses is binding upon an estate and it is afterwards estopped from asserting them?

This court has held that in a proper case it will assert such a defense of its own motion, even when not suggested in argument.

Sullivan *vs.* Portland R. R. Co., 94 U. S., 811.
Richards *vs.* Mackall, 124 U. S., 183.

We think what we have pointed out in the record and said upon this point clearly shows that the doctrine of laches

should have been applied in this case in all of its phases. That the auditor was correct in his conclusion that Waggaman was guilty of laches seems almost too clear for further argument, but his application of this doctrine to this case seems to us novel in the extreme, to say the least. And we are at loss to comprehend upon what theory and based upon what authority he felt justified in splitting the application of the doctrine and holding a loss of right in Waggaman to contest the reasonableness of the amounts paid these several persons as fees because of the lapse of time and Earle's death causing the loss of the benefit of his evidence; and in the next breath holding that these facts did not affect the right to contest the character of services for which the payments were made notwithstanding the services had been rendered and paid for and the fund created thereby. It seems to be too well settled law to cite authorities to this court that lapse of time to such an extent as to warrant an abandonment of a claim is sufficient in itself to support the defense of laches. But when in addition thereto, one of the parties has died and he is an essential witness, and the other party has failed to assert a claim against his administrator for more than six years, there would seem to be such a case that there could be no dispute about its application.

In Cummings *vs.* Baker, 169 U. S., 189, a case which seems to be directly in point, although the statute of limitations was specially pleaded, the court expressly bases its decision upon two grounds. The court on page 206 says:

"Apart, however, from the bar of the statute of limitations, the facts as to the full knowledge of the fraud, if any existed, by Cummings more than three years before the filing of this bill and his conduct after he obtained it, his permitting Baker to go on and prosecute the claims, as if they were his own, bars Cummings from invoking a court of conscience to put him in a much better position than he could possibly have occupied if he had spoken and asserted his rights in due season."

Then again, on page 209, the court, in conclusion, says:

"Because we rest our conclusions upon the application of the bar of the statute and the laches of Cummings, we must not be considered as intimating that we conclude that there was either clear and convincing proof or even a preponderance of proof, that the sale was as claimed by Cummings."

What the Court of Appeals has said upon the application of this defense to this cause we respectfully submit is entirely without justification by anything contained in the record, as we have endeavored to point out. For instance, what is there in this record to justify this statement?

"But if there are any laches in this case they are the laches rather of the defendant than of the complainant. It was claimed by William E. Earle, and the statement is reasserted by the defendant in his brief, that up to July, 1893, there was no surplus of fees to be divided with the Causten estate, but rather a deficit of upwards of $18,000. Now, if this statement was correct, there was nothing to be divided until after the passage of the appropriation bill of March 3, 1899; *if it was not true the statement was a fraud, which the complainant would seem to have no opportunity to discover at the time.*"

Had the learned associate justice who wrote this opinion examined the bill of complaint he would have found that the contract provided for the keeping of books; and had he examined the auditor's report would have discovered that Waggaman had examined those books of account in Earle's lifetime, and knew that Earle had made payments, or claimed to have made payments, to the very people that we were discussing in our brief; and that Waggaman knew the amount that Earle's books showed he claimed at that time to have paid them. And if Earle was lying in these statements, Waggaman then had the opportunity so to ascertain, and if he believed that the payments were improper as a charge against the Causten estate, he then knew from his examination of the books that Earle owed him money.

The payments were proper under the terms of the contract. As we understand the law, when it was proved,

1st. That payments were made;
2d. The services rendered, and,
3d. That in the opinion of William E. Earle they were necessary to secure the appropriation;

we then had the right to rely upon the presumption of law that the services were proper legal services until there was evidence to the contrary. No such evidence was ever offered, and when the auditor undertook to discriminate we submit he did not mention a single instance in his report which would even tend to show that any one of the special counsel employed had ever performed, or agreed to perform, any service that could be said to be of even a doubtful character in any sense of the word.

The contract between the parties, in speaking of the character of items of expense that were to be deducted from Earle's fees received from the claims, says:

"Such as clerk hire, printing, advertising, office rent, *and the compensation of other attorneys necessarily associated with him and in whose compensation said Earle does not share.*"

This reference to other attorneys necessarily employed by the said Earle, it must appear to the minds of all reasonable men, was intended to clothe Earle with a discretionary power in the matter—*i. e.*, if he deemed it essential for the welfare of the claimants, to employ the assistance of other parties, then he should have the right to do so. The fact that it was necessary and essential to employ these special attorneys is clearly established by the testimony of Curtis and Pickett, and also the letters written by Earle to Miss Young (Rec., pp. 180, 182), which were offered in evidence by complainant, and the conversations between Earle and Mr. Schriver (Rec., p. 80).

Curtis testified:

"I knew Mr. Earle and associated with him continually from 1885 to the time of his death in 1894, and know he devoted almost his entire time to these cases" (Rec., p. 55).

And on page 57: The claims were first presented to Congress for payment in 1886, and continuous efforts, made in every session until the first act was passed on the third day of March, 1891, by Mr. Earle, secured an appropriation. And speaking of Mr. Conger, Mr. Thompson, Mr. Hutchins, Mr. Morgan, Mr. Worthington, Mr. Money, Mr. Bradford, Messrs. Dudley and Michener, and Mr. Shelley, Curtis says, in reply to the following question:

"Q. Do you know C. R. Shelley, and do you know what he did to assist Mr. Earle in the prosecution of these cases?

"A. Yes, sir. He, like the other gentlemen, appeared before the committees and argued the legal questions and were often time and time and again at the office of Mr. Earle talking with him and preparing themselves for the presentation of those cases, and Mr. Earle coached them. The act of Congress sending these cases to the Court of Claims did not make them judgments, but left it for Congress to say whether the findings of the court should be paid; and if it had not been for these services, we would never got a cent" (Rec., p. 59).

Mr. Curtis further said he considered the amounts very reasonable in view of the labor performed and the results obtained, *and if it had not been for these services the fate of the French spoliation claims would have been doomed* (p. 59).

On cross-examination, at pages 60 to 63, this witness speaks of data found by some one of the several special attorneys which materially assisted them in securing this appropriation, these claims being contested in Congress on the theory that France and America were at war, and that the decrees by the French court were based upon that ground; and some one of these special attorneys having found data which absolutely established that none of the decrees by the

French courts were based on the ground that the United States and France were at war, refuted that statement in Congress. The testimony of Pickett on pages 63 and 64, 73, 74, 75, 88, 91, and 92, corroborates the testimony of Curtis to the effect that the services rendered to Earle were perfectly proper and legal services; they were services rendered to him in consultation in his office in relation to the manner in which the cases should be presented to the several committees, before whom the appropriation bills were then pending, and some wrote briefs. All of those designated as special attorneys consulted with him in his office and left his office for the avowed purpose of appearing before the committees with the intention of arguing the questions before said committees.

There is absolutely no testimony in the record to show that any one of these several persons who were paid by Earle were "lobbyists" or rendered services which could be termed "lobbying." And there is not a scintilla of evidence in the record to show that these several persons were not attorneys-at-law. Even the fact, if it be such fact, that they were not members of the bar would be no reason that they were not competent to argue the matter before the committees; and it is only fair to assume that a man with the extensive knowledge in relation to these matters that Earle possessed, after having continually prosecuted these cases for five years before Congress, endeavoring to secure appropriations, chose only such persons to assist him as he knew could render valuable legal services before the committees. We use the term "legal," not in the sense of services rendered by an attorney-at-law, but of services which are designated by the law as being legitimate and proper to be rendered before a committee of Congress.

Every case cited for the appellees below was in relation to a contract between a claimant and some individual who was suing to recover on a contract for services, and the burden being upon the plaintiff to establish his claim, he

was compelled to show that he rendered proper legal services; and in every instance, as we recall, these cases established beyond question that the character of services rendered was illegal.

Take the case of Owens *vs.* Wilkinson, 20 App. D. C., 51. There Dr. Owens had a claim against the United States for pay, and it was found necessary to secure an act of Congress. Wilkinson's testimony was clear and open to the effect that the only services that he rendered in the matter were, not in discussing the case before a committee of Congress, but in going to see members of Congress and Senators at his club, and asking these members of Congress and Senators, as a personal favor to him, to advocate the bill. These are of the character of services condemned by courts of law, and held to be against public policy; but where is there a scintilla of testimony in this case that Earle paid one dollar to any one, for which he claims a credit in this account, for rendering any other services than consulting with him, Earle, in his office, and advocating the bill before the committees in the committee rooms of Congress?

The appellees will contend here that he, Earle, admitted in his conversation with Miss Young and with Mr. Schriver, as testified to by them and in the letters which he wrote to Miss Young, that he paid these several gentlemen for "lobbying." We submit, after reading Miss Young's and Mr. Schriver's testimony and reading these letters, it would take, in our opinion, a perverted mind to gather any such fact therefrom. This testimony clearly proves directly to the contrary; and, besides that, these letters establish two very apparent facts—first, that Earle in his lifetime strenuously contended that the services rendered were services which were embraced under the aforementioned clause in the contract, and, second, that they, in his opinion, *were absolutely essential to the interests of all concerned.*

This court, we respectfully submit, must take into consideration that the contract here in question, to wit, the one

between Waggaman and Earle, was based upon the fact that Earle had secured contracts with claimants to render them professional services, for which he was to receive certain contingent fees, he, Earle, to bear all costs and expenses in the prosecution of the cases. Earle was to receive nothing until he had secured an appropriation from Congress. Some of the contracts specifically set forth the fact that he was to render all necessary services before the committees of Congress and to pay all expenses of others associated with him in rendering services before any committees of Congress. This is specifically set forth in the contract between Earle and the several attorneys in Baltimore who employed him to prosecute these cases in their behalf, which contract embraces a large number of claims. Here was a duty imposed upon Earle. Will it do now for the administrators of Causten, having a contract based upon what Earle was to receive for professional services, to say that they, the administrators, were better judges, or that any court is a better judge, of what was necessary to be done at that time by Earle in promoting the interests of his clients? We submit, no. Certainly that was wholly a matter of discretion, in which Earle was the sole judge.

Suppose Earle had refused to employ or associate other counsel with him? If the testimony of Curtis and Pickett is to be credited, and it was not disputed, these claims never would have been paid. Mr. Earle had been working for five years, and the other counsel who were interested in French spoliations cases had been working for five years, Messrs. Shellabarger & Wilson, Mr. King, and ex-Governor Boutwell; this record shows that they were interested in these claims outside of any interest which Earle had, and yet the combined efforts of all these gentlemen were fruitless. Without stating any other ground, in view of these facts, we submit it is unreasonable and unfair now to contend that Earle exceeded his authority.

But suppose it were established in this case that Earle

did expend money improperly, and that the services rendered him in securing the 1891 appropriation were illegal, what have the appellees to do with such a defense? Can they criticise the means by which the fees of Earle were earned as unlawful and at the same time demand a share? In equity and good conscience, is not the old moral maxim, that he who wants to share the fruits of my labors should also share the burdens thereof, applicable to such a situation?

The Supreme Court of Mississippi in a somewhat similar case said:

"But suppose there were improprieties of this nature committed in carrying out the valid contract, is it, therefore, settled that complainant is to have none of the fruits? The Government, having paid the money, has no concern in it, and, on the facts here, we do not think defendants should have it all, free from obligation to complainant."

Knut *vs.* Nutt, 83 Miss., 365-374; affirmed in 200 U. S., 12.

This court has had the converse of the proposition to dispose of in one or two cases, namely:

McBlair *vs.* Gibbs, 17 Howard, 232,
Brooks *vs.* Martin, 2 Wall., 70,

and held, that in the division of a fund which may have been created by unlawful means, it would not look to see whether the contract creating the fund was illegal.

We therefore submit that the court below erred in refusing to allow appellant credit for all the payments made by Earle to the attorneys associated with him in securing the 1891 appropriation; just as it would have erred in sustaining the defense, if made, that all of Earle's fees were the fruits of a champertous, and therefore illegal, arrangement with the claimants.

2. Second Assignment of Error.

What we have before said concerning laches is also applicable to this assignment of error.

The contracts in the record (Rec., pp. 144-146-198) are typical of all made by Earle with the claimants and associate attorneys, and on a mere glance it will be seen that they all were for the rendition of his personal services as an attorney-at-law upon a contingent fee, and when he died they as a matter of law all terminated.

It is perfectly apparent that the contract made with the Causten administrator was based on and dependent upon Earle's several contracts with the claimants, and consequently when they ceased to exist the former necessarily fell. By its very terms it only required William E. Earle to divide such fees as he received. Look at paragraph 3; it says:

"Said Earle shall pay to the said Waggaman * * * 25% of all fees received, or which shall hereafter be received by him in each case" * * *

There is absolutely no obligation on Earle's part contained in this agreement to do other than divide those fees received by him in the manner designated. Place upon it any construction that it is susceptible of and this is the most that can be made out of it. For his administrator to divide anything received *by his estate* other than fees due him at the time of his death under these contracts with claimants was never even contemplated. No fees could then be earned and received by his estate, as none of his contracts survived his death. Consequently a *quantum meruit* could not even be read into the contract with Causten's administrator, for the reason that a *quantum meruit* could not be read into Earle's contracts with the claimants. What right, then, had the Causten estate to any participation in the appropriation o

1899? From a legal point of view, none whatever. The Earle estate, having fallen into the hands of friends and been treated generously and allowed a *quantum meruit* for Earle's services, felt not unwilling to share its good fortune with the Causten estate. Not satisfied, however, to accept an offer to share what Earle's estate received, not through the terms of any contracts Earle had, but contrary to their very letter and spirit, the Causten estate not only sets up stale objections to those items of expense incurred by Earle in his lifetime, but, in addition to that, makes the remarkable claim that though Earle's death may have terminated his contracts with claimants, nevertheless his estate is in duty bound under the terms of his agreement with the Causten administrator to complete at its expense all the cases in which Earle had been employed to render his services as an attorney-at-law and divide the fees without taking these expenses into account.

The untenableness of this position is so apparent that it might well be left without argument but for the fact that the auditor, the trial court, and the Court of Appeals seem to have been misled by it. How Earle's executrix, not a member of the bar, was to prosecute these claims without powers of attorney, and how she was to collect fees from the claimants without contracts, we cannot conjecture.

The auditor's view of this is thus stated:

"A further claim is made in behalf of the defendant which was the subject of additional testimony taken after the reference was first closed. Under the agreement between Henry M. Earle and Curtis and Pickett of November 23, 1894, the defendant claims to have paid the said Curtis and Pickett a sum equal to thirty per centum of the fees received by the estate of William E. Earle under the appropriation of March 3, 1899, amounting to $15,164.78. To this claim vigorous objection was made by the counsel for the complainant and additional testimony here was taken for the purpose of showing what services were rendered by these two gentlemen in

connection with the collection of the fees due to William E. Earle or his estate, upon the claims included in the appropriation act of 1899. It will be remembered that as to all of these claims, the cases in the Court of Claims had been prosecuted to conclusion and findings in favor of the claimant by the court, had been transmitted to Congress, prior to the death of William E. Earle. All subsequent services rendered in relation to these claims were in the direction of securing from Congress an appropriation of the sum necessary for their payment. There was one additional class of work imposed upon the attorneys for the complainant in relation to some of the claims, that is to say the necessity of satisfying the Treasury Department of the identity of the claimants or parties entitled to receive the money. The said Henry M. Earle represented the estate of the said William E. Earle to a certain extent in the making of the said contract with Curtis and Pickett and himself and by the said contract agreed in conjunction with the said Curtis and Pickett to continue the collection of these claims and of the interest of the estate of William E. Earle therein. So that we have three competent attorneys engaged in the work of endeavoring to secure from Congress an appropriation for these claims.

"After a very careful consideration of the conditions as they appear in the proof, I am of the opinion that the service in question did not require the time and attention of these three gentlemen, and that it would not be just to impose the burden of the payment to them upon this case in such manner as to diminish the small fund which will be found due and payable to the complainant. Mr. Henry M. Earle acting as attorney for the estate would have been competent alone to have performed with the co-operation of one of the two other parties to the contract. *I have therefore in the accompanying account allowed credit for one-half of the said thirty per centum which is in my judgment a liberal allowance for the present accounting*" (Rec., pp. 15-16).

Might it be asked, *a liberal allowance for what?* Who was making an allowance, Curtis and Pickett, or the Earle estate? The record completely answers these questions, to say nothing of our former comments. When the 1899 appropriation was made all contracts with claimants, with whom Earle in his lifetime had direct contracts, stood in the

names of Curtis and Pickett and Henry M. Earle, and were in existence prior to Henry M. Earle's appointment as administrator of his father's estate, and even prior to the date of the contract with his mother as executrix. (See Rope's contract, Rec., p. 145, folio 240.) This money was being collected by Curtis and Pickett, and after the deduction of their fee the balance was turned over to the Earle estate. These are the bald facts as shown by record.

But suppose our assumption that all these contracts with the claimants were dead is erroneous, what then would be the situation as to the Earle estate's duties under the contract with the Causten estate? That agreement says that Earle is to pay the Caustens 25 per cent. of all fees, etc., after having deducted the proper expenses, namely:

"Clerk hire, printing, advertising, office rent, and the compensation of other attorneys necessarily associated with him in whose compensation said Earle does not share" (Rec., p. 6).

Earle's death, it certainly cannot be disputed, occasioned the *necessity* for some one to push these cases; and, whether clerk or attorney, his compensation would be a legitimate charge against the Causten estate under this provision of the agreement.

Now, what did the Causten administrator, subsequent to Earle's death, do, knowing the character of the contracts he (Earle) had with the claimants, knowing that they were based upon contingent fees? Did he come forward and suggest any plan? The testimony shows he did not. Did he ascertain what the Earle estate was doing? He did in a certain way. He knew or should have known, and the law assumes that he did know, that Curtis and Pickett had entered into contracts with the claimants. He had every opportunity to ascertain it. The books were open to his inspection, and the contracts were there in the office, and yet he never spoke one way or the other, as to the terms of the con-

tract made with Curtis and Pickett for the continued prosecution of those cases, nor did he contend, until this case came into court in 1901, seven years after the making of the contract with Curtis and Pickett, that it was unfair and unreasonable, or that the value of the services rendered by them was not commensurate with the fees they would receive. Yet these gentlemen during all these seven years were laboring to secure an appropriation, and advancing money to pay the costs, and after they secured the appropriation continued to labor to realize thereon.

On the other hand, what did the Earle estate do? The executrix was not an attorney-at-law, and could not represent the claimants as Earle's successor in the Court of Claims, but she could do something. She could employ attorneys to do the work, and in that way realize something for all parties concerned. She was not bound to do this, we submit, but if she did, can it be successfully contended that she exceeded her authority?

If anything was to be saved for the Earle estate and those who claim under it, something had to be done at once, and Curtis and Pickett were very much alive to the situation.

Curtis says (Rec., pp. 89 to 94) that Earle having died the various clients were clamorous for their cases to be proceeded with, and to prevent other attorneys getting hold of the cases on account of Earle's death he and Pickett entered into correspondence with the various clients, and contracts and powers of attorney were given to them and Henry M. Earle. The latter was not administrator of his father's estate at the time that these contracts were entered into. What was to prevent other attorneys from continuing the prosecution of these cases by obtaining contracts with Earle's clients?

A fair instance of what would have occurred did occur in what are known as the "Baltimore claims." These claims were prosecuted under a contract with John and David Stewart, John E. Semmes, Robert Riddell Brown, and Frank

P. Clark, on one part, and Earle on the other. These Baltimore gentlemen, representing, either as counsel or as administrators, a large number of estates, were interested in claims, and entered into a contract with Earle to prosecute the claims and all other claims which they should secure, Earle to pay all the expenses and perform all the legal services in relation to the prosecution. The second paragraph of the agreement is in the following language:

"That the party of the first part (Earle) covenants to take charge and control of all claims included under this agreement and to prosecute the same before the Court of Claims or before any of the departments of the United States Government, or before Congress, or before any officer, commission or tribunal especially authorized to take cognizance of said claims or any other diplomatic negotiations that may be deemed best for the interests of said claimants, and shall bear all charges and other expenses that may be incurred in so prosecuting said claims * * *" (Rec., p. 148).

An additional provision of the agreement was to the effect that all contracts made by these several attorneys with claimants should be made in the joint name of Earle and one of the other parties. Earle having died when the appropriation of 1899 was made, these gentlemen came forward and claimed that the Earle estate was only entitled to a *quantum meruit*, and that they were the surviving attorneys under the contract with the claimants, and entitled to secure the drafts and enter their appearance in the Court of Claims for the claimants and secure the money, and that they would pay Earle only a *quantum meruit*, as he had not completed the services called for under the agreement with them, nor completed the services called for under the agreements with the claimants; that he had only prosecuted to the point of the findings of the Court of Claims, and had not secured the appropriation. This necessitated the filing of a suit in equity and enjoining these several attorneys from entering their appearance in the Court of Claims or from in any way

collecting these drafts. By mutual agreement the case was decided by arbitrators. In that litigation the complainant in this case intervened and he acquiesced in its dismissal. The finding of the arbitrators, marked "Exhibit E" (Rec., p. 177), placed the burden upon the Earle estate to employ attorneys to continue the prosecution of the cases, and recognized this contract that was made by Henry M. Earle with Curtis and Pickett, and recognized the very valuable services rendered by these gentlemen in securing the appropriation five years subsequent to Earle's death. By reason of the death of Earle, and notwithstanding the fact that the Earle estate was charged with employing counsel to assist the further prosecution of the cases, the findings materially reduced the proportion of the fees Earle would have been entitled to under the contract.

These contentions were obviated in cases other than those under the Baltimore agreement because Curtis and Pickett had secured contracts with the claimants individually.

We submit that the reasonableness of the charges of Curtis and Pickett for their services is abundantly evidenced by the record.

By a careful reading of the auditor's report upon this point it will be seen that he failed to appreciate the fact that Curtis and Pickett, *by reason of their contracts with the claimants, had a lien on the fund;* and he also failed to further appreciate the fact that under the terms of the contract made by Henry M. Earle with them, *they, Curtis and Pickett, were to pay three-tenths of all the expenses incident to the prosecution, which covered a period of over five years.* The auditor seemed to think that there was very little to be done subsequent to the findings by the Court of Claims. Yet, from the testimony of Curtis and from the evident fact that it took five years after Earle's death to secure the appropriation of 1899, the securing of an appropriation seems to have been no easy task. Earle secured findings of fact in a large

number of claims as early as 1886, one year subsequent to the date of the act certifying the cases to the Court of Claims. These findings of fact, which the auditor seems to think was all that was necessary to be done, waited six years for Earle, with the assistance of others, to secure an appropriation by Congress to pay them. That securing an appropriation was no light task is further evidenced by the fact that in 1895 President Cleveland vetoed the appropriation bill which provided for their payment.

And securing the appropriation was not all the work necessary. All these facts were well known to the claimants when they entered into the new contract with Curtis and Pickett, and well known to Henry M. Earle when he entered into the contract with them. The act of Congress of January 20, 1885 (23d Statutes at Large), which referred these cases to the Court of Claims, expressly provided that the action of the Court of Claims should not be binding upon Congress; and the appropriation act of 1899 shows that there was much additional work to be done before the claimants could realize upon the appropriations made. Under the provisions of this act the claimants were required to file a motion in the Court of Claims and secure a certificate to the Secretary of the Treasury that the administrator did in fact represent living next of kin. Upon filing these motions, Curtis says that they were required to take many depositions to establish the fact that the administrator did represent next of kin living at the time of the passage of the act. He further states that he was required to take several trips to New England and other parts of the country to take depositions to establish these facts, and then, after securing said depositions, they were required to argue the motions before the Court of Claims.

Another proviso to the act of Congress was that it must be shown that the administrator had given good and sufficient security. This, according to Curtis, required also considerable work, owing to the fact that the orphans' and

probate courts throughout the country refused to grant the character of certificates required by the accounting offices of the Treasury. Another proviso to the act required the claimants to show affirmatively that the claims were not held by assignment or by any insurance company. In one large case in particular (the case of Peter C. Brooks), the Treasury Department held that there had been an assignment and refused to allow it. This required a special act of Congress to get this particular claim paid. The Treasury Department then raised the question whether there were debts due the United States Government by the original claimants on account of unpaid duty bonds that had been given away back in 1820, many of these bonds having been found outstanding on the books of the Treasury. This required resistance and written and oral arguments before the Comptroller of the Treasury (Curtis' testimony, Rec., pp. 89 to 94). These claims, which were paid under the act of 1899, were identical with the claims which were in the appropriation bill of 1895 that was vetoed by President Cleveland, and when the appropriation had been vetoed by him the general impression was that all future efforts for appropriations would be doomed. But these gentlemen were persistent in their efforts, and through their persistency they secured the appropriation of 1899.

The amount received for this work was $15,000—five years' work—which being divided equally between them as provided by the contract, gave each about $1,500 a year; and for five years they had been advancing three-tenths of the expenses. In fairness, we submit that after an examination of this record, no reasonable person can say that the amount they received was excessive.

The fund in hand is realized by virtue of the contracts made by these gentlemen with the claimants. Can the complainant now be heard to say in a court of equity that the costs of securing this fund—the cost of paying the attorneys who entered into the contract with the claimants for the

benefit of the Earle estate so that there would be a fund realized—is not a proper and legitimate expense to have been paid by the Earle estate?

3. Third Assignment of Error.

The foregoing presentation of the case is made on the hypothesis that the case will be considered by this court in the light of its presentation to the court below. It is submitted, however, that upon a consideration of the case, as actually shown by the record, the bill should be dismissed without any accounting whatever, for reasons now to be stated.

As above appears, prior to April 18, 1885, the date of Waggaman's appointment as administrator of Causten's estate, William E. Earle was in possession of the Causten papers, so called, and had agreements and powers of attorney with a great number of the French Spoliations claimants. By a decree of the supreme court of the District of Columbia, holding an orphans' court, on May 1, 1885, a contract between Earle and Causten's administrator was authorized and directed, and, by virtue of that decree, on June 12, 1885, the administrator and Earle entered into the contract set forth on pages 5 to 7 of the Record. By the terms of that contract, as has appeared, Earle was to have the custody and charge of the Causten papers, and the exclusive use thereof, until the final adjudication of all the cases in which the same should be used in any manner, and, in consideration of the use of the papers, Earle was to pay the administrator twenty-five per cent. of all fees received and to be received by him, Earle, in each instance, after the deductions hereinbefore considered; and it was provided that true books of account should be kept by Earle of all fees received and to be received, and also of all expenses attending the prosecution of claims in which he should be engaged, the said books of account to be open at all times to the inspection of the ad-

ministrator; and it was also provided that settlements between Earle and the administrator should be made every six months, and the proportionate part of the fees due the administrator should be paid over to him at such settlements. For the purposes of what is hereinafter said, these are all of the essential provisions of the contract.

The first appropriation for the payment of any of the claims was made in 1891, and the appropriation, so far as Earle's cases are concerned, was in fact not collected until 1893, and, as will be seen by reference to Schedule A of the Auditor's report (Rec., p. 17), the first statement of the account is up to August 1 of that year. According to the account thus stated of Earle's receipts and expenditures up to that date—that is to say, through, including, and on account of the appropriation of 1891,—as finally adjudicated by the Court of Appeals of the District of Columbia, Earle was allowed office expenses aggregating $21,780.32, payments to Pickett and Curtis of $16,550, and payment to L. B. Clarke of $700, in all $39,030.32; and he was charged with fees collected, $38,745.70, leaving a balance in Earle's favor of $285.32. Accordingly, had the account between Earle and the administrator then been closed, the Causten estate would have received nothing and Earle would have been out of pocket $285.32.

As by the contract Earle was to have settlements with the administrator every six months in respect only of the proportionate part of the fees due the administrator, there manifestly remained, on the hypothesis of a settlement on August 1, 1893, nothing more for Earle to do as respects accounting until he should have received further fees, which he never did, by reason of his death before the second appropriation.

Earle died August 13, 1894, nearly five years before the second appropriation, and at his death, as above stated, his contracts, which were contingent upon his prosecuting the claims to collection, died with him; and whether or not his

estate might claim a *quantum meruit* for what he did during his lifetime is immaterial, in view of the shape in which the case was made up and now stands on the record.

During Earle's lifetime, Curtis and Pickett had been associated with him, and, on his death, and wholly without regard to any supposed authorization by his executrix, Curtis and Pickett and Earle's son set about procuring new agreements in their own names with the claimants. This is shown by, among other things, the new contract with Ropes, administrator of Amory, which was entered into October 24, 1894 (Rec., pp. 145, 146), whereas the agreement between Curtis and Pickett and Earle's son was made November 23, 1894, under a supposed authorization in that behalf of the same date by Earle's executrix (Rec., pp. 182-186). Pickett, in his deposition, says that he and Curtis had an interest in the appropriation made under the act of 1899, and not under the act of 1891, and, subsequently referring to this statement, says:

"I meant Mr. Curtis and myself succeeded Mr. Earle. Mr. Curtis and myself have no interest in any of these claims under the act of 1891, because Mr. Earle was then living and conducting his own business" (Rec., p. 26, fols. 45, 46).

And he subsequently testifies as follows:

"Q. State whether any separate contracts with the claimants were had by you and Mr. Curtis subsequent to the death of William E. Earle.

"A. In the cases where Mr. Earle was the sole attorney, the various claimants have given the power of attorney to Mr. Curtis, myself and Henry M. Earle to continue the prosecution of the claims" (Rec., p. 78, fol. 140).

And Mr. Curtis testifies as follows:

"Mr. Earle having died the various clients were clamorous for their cases to be proceeded with, and to prevent other attorneys getting hold of the cases on account of his death, we entered into correspondence at once with the various clients, and contracts and powers of attorney were given to

myself, Mr. Pickett and Mr. Henry M. Earle.

"Q. Was Mr. Henry M. Earle the administrator of his father's estate at that time?

"A. I think not. This was while Mrs. Earle was acting as administratrix (executrix) of the estate that these contracts were entered into with us" (Rec., p. 89, fol. 161).

These contracts, of which the one in the Amory case is typical, provide as follows (the administrator of the estate being party of the first part and Curtis, Pickett, and Henry M. Earle parties of the second part):

"That for the purpose of completing the prosecution of any and all of the French Spoliation claims of said estate, the party of the first part, in consideration of services rendered and to be rendered by the parties of the second part, hereby stipulates and agrees that said second parties be substituted in the place and stead of said William E. Earle in the contract heretofore made by and between the said estate and said Earle, upon the same terms and conditions as to services to be performed and fee to be paid, as in said former contract provided. And the parties of the second part are to continue the prosecution of said claims at their own cost and charge, without further retainer or advances, and for the compensation in said contract stipulated they are given a lien on the warrants or drafts for the sum or sums recovered to the extent as provided in the aforesaid contract with said William E. Earle" (Rec., p. 145).

This much of the record, taken alone, would indicate that down to November 23, 1894, Henry M. Earle, who afterwards became his father's administrator d. b. n., concurred with Curtis and Pickett in the view that new and independent contracts with the several claimants were necessary in order to the continued prosecution of the claims, but Henry M. Earle's letters to Causten's administrator, written between the date of his father's death and that of the agreement between himself, of the first part, and Curtis and Pickett, of the second part, are supposed to show the entertainment by Henry M. Earle of a continued interest in the claims on the

part of Causten's estate. Thus, on September 15, 189–, evidently 1894, he wrote Causten's administrator, acknowledging a letter of the latter of even date, requesting his views on the subject of the present status of the cases, and saying that he had been diligently at work at the matter and in a few days would have matters sufficiently straightened out to inform the administrator fully and would call on him (Rec., p. 198); and on November 22, 1894, he wrote the administrator that his mother, as executrix of the estate of his father, had given him a full power of attorney, that he had in charge the entire matter, and that in relation to the claims he had not forgotten his understanding to report to the administrator and would have a talk with the latter, or his attorney, on the subject within a few days (Rec., p. 145). The administrator, however, appears to have done nothing, whereas, as stated, on November 23, 1894, the day after his last letter to the administrator, Henry M. Earle, with his mother's authority, entered into the agreement with Curtis and Pickett.

From this date on Curtis and Pickett and Henry M. Earle appear to have prosecuted the cases in which William E. Earle had been interested, not, however, on account of William E. Earle's estate, as the contract between Henry M. Earle and Curtis and Pickett seems to have contemplated, but as attorneys substituted by the respective claimants in the place and stead of William E. Earle, as shown by the typical contract in the Amory case; and, as has appeared, Curtis and Pickett disclaimed any interest in the fees accruing out of the appropriation of 1891, and claimed interest only in those thereafter realized.

The prosecution of the claims having been continued by Curtis and Pickett and Henry M. Earle under the new contracts made by the claimants with them, and the payments by the claimants of the fees agreed by them to be paid having been made to the three in their individual capacities, it is plain that none of the fees arising after 1891 was paid to,

or received by, any representative of the Earle estate, as such; and, accordingly, Henry M. Earle, who became his father's administrator *d. b. n.*, could stand in no possible relation of accountability to Causten's representative on any hypothesis until and unless he had received from himself and Curtis and Pickett payment of some part of the fees as receivable by him as his father's administrator. No such thing appears to have happened; wherefore an equitable action for an account would seem to have no foundation whatever.

If it be said, however, that Henry M. Earle, by his answer, appears to have acknowledged his liability to account as administrator of his father, such admission cannot be extended beyond the admission of a liability to account for what he actually received, and this, in a breath, disposes of any objection to an allowance to him of, not what he paid Curtis and Pickett, but of what they retained and received as equal parties with him to the contracts with the claimants; in other words, if the three were equal parties to the contracts and were each in equal right receiving what he did receive, how can accountability on the part of Earle be asserted for what he never got, namely, for that which went to his associates?

If it be said that the case was tried below on the principle of an accountability on the part of Henry M. Earle for all the fees which came from the claimants, the short answer is that neither Curtis nor Pickett is party to the case and cannot be bound by any adjudication therein; and, further, that any possible action by the Causten estate against Earle's estate could be only for the value to Earle's estate of the continued use by its representative or representatives of the Causten papers, and what that value would be appears from Pickett's testimony, as follows:

"Q. Have you examined the Causten papers?
"A. Yes, sir.
"Q. Are you familiar with them in detail?
"A. Yes, sir.

"Q. Do they contain any papers in relation to any claim which of itself would be proof in cases pending before the Court of Claims * * *

"A. I say in answer to the question that there is but one case that I can call in which the Causten papers contain record evidence sufficient to establish a case, and in this case it was not complete. I think we had to obtain other papers from the Treasury Department; they were not absolutely complete. They do also contain some other evidence that was material in proving some of the cases. Their chief value consisted of a list of persons that Mr. Causten had collected who had suffered losses, and with reference to another list which contained a list of vessels which they were supposed to have lost, but with the exception above there was no evidence, and there were a great many claims in which they contained no evidence, or any reference to it. The Causten papers, with the exception of the one case, contain no proof with which we could have gone into court and established the seizure and condemnation of the vessels without additional evidence" (Rec., p. 189).

To state the matter otherwise, the situation is that Earle himself received all of the fees properly receivable under his contracts, which were payable out of the appropriation of 1891; the allowed expenditures by him down to and through the collection of the claims in which he was interested, and which were paid out of that appropriation, exceeded the fees collected by him, wholly without regard to the expenditures claimed for and disallowed; even had his personal representative collected out of the future appropriations any further fees, the right of his estate to allowance for all expenditures actually made might properly be asserted; and the record fails to show that Earle's estate collected any such fees, the fact being that all future fees in the cases in which Earle was interested were collected by his son in his character, not as administrator, but as an individual, and Curtis and Pickett, and there is no showing of any settlement between Henry M. Earle, individual, and Curtis and Pickett, on the one part, and Henry M. Earle, as administrator, on the

other; wherefore the initial fact essential to accountability of Earle's estate, namely, the receipt by his administrator, as such, of any fees, is lacking. It is true that Henry M. Earle, as administrator, appears to have considered himself obligated in that character to the Causten estate, for he undoubtedly rendered one account, if not two, to Causten's administrator before the bill in this case was filed, but that fact, resting as it does upon a double mistake of fact and law, can have no effect as binding Earle's estate.

The bill, however, is filed against Henry M. Earle, as administrator, and states in terms that he "is sued in his representative capacity" (Rec., p. 1, fol. 1); and it demands of the defendant an account of all moneys received by Earle in his lifetime, and by the defendant, after his death, as fees for services in connection with the claims. The account, as stated by the auditor, and as adjusted by the final decree in accordance with the opinion of the Court of Appeals, shows that Earle in his lifetime made legitimate and proper expenditures, exclusive of those disallowed, which exceeded the total amount of fees received by Earle; and, accordingly, unless the estate of Earle is to be treated as bound by his contract with Causten's administrator, which it cannot be, there is no possible hypothesis upon which the bill could be sustained.

It appearing that Earle's relation to the claims ceased at his death, and that except for the implied admission of his administrator, which cannot bind his estate, there is no showing of fees received by his representative under conditions rendering him or the estate liable to an accounting, the bill should have been dismissed, and such should be its fate in this court.

Respectfully submitted,

HENRY E. DAVIS,
JOHN C. GITTINGS,
For the Appellant.

Office Supreme Court, U. S.
FILED
OCT 18 1907
JAMES H. McKENNEY,
Clerk.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1907.

Nos. 19 and 388.

HENRY M. EARLE, ADMINISTRATOR DE BONIS NON, WITH THE WILL ANNEXED, OF WILLIAM E. EARLE, DECEASED, APPELLANT,

vs.

T. PERCY MYERS AND JOHN J. HAMILTON, ADMINISTRATORS DE BONIS NON, WITH THE WILL ANNEXED, OF JAMES H. CAUSTEN, DECEASED, APPELLEES.

SUPPLEMENTAL BRIEF ON BEHALF OF APPELLEES.

T. PERCY MYERS,
M. J. COLBERT,
S. T. THOMAS,
For Appellees.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1907.

Nos. 12 and 388.

HENRY M. EARLE, ADMINISTRATOR DE BONIS NON, WITH THE WILL ANNEXED, OF WILLIAM E. EARLE, DECEASED, APPELLANT,

vs.

T. PERCY MYERS AND JOHN J. HAMILTON, ADMINISTRATORS DE BONIS NON, WITH THE WILL ANNEXED, OF JAMES H. CAUSTEN, DECEASED, APPELLEES.

SUPPLEMENTAL BRIEF ON BEHALF OF APPELLEES.

By leave of the court the appellees beg to submit the following supplemental brief in reply to what is called, in the brief of the appellant, the third assignment of error, under which head the appellant claims that the bill of complaint in the Supreme Court of the District of Columbia should be dismissed, for the reason that the contract entered into between Thomas E. Waggaman, administrator of the Causten estate, with William E. Earle, was absolutely terminated and destroyed by Earle's death. This third assignment of error was not called to

the appellees' attention at any time during the progress of this litigation until after the appellees' brief had been printed for use in this court.

In reply to the contentions made under this third assignment of error the appellees respectfully submit the following:

First.

It is conceded in the record in this case, and it was conceded at the oral argument before this court, that the original bill filed in the Supreme Court of the District of Columbia was for an accounting to which the Causten estate was entitled. It is conceded that William E. Earle in his lifetime, collected large sums of money for which he was obliged to account to the Causten estate. No demurrer was filed to the bill, and none could have been successfully filed. For that reason the bill for an accounting was properly brought, and an accounting should have been had. Not only is that so, but in the account presented by the Earle estate to the Causten estate, and which appears on page 95 of the main record, and which was filed on the 13th day of November, 1902, the Earle estate admits an indebtedness due from the administrator of $2,879.57. This account on its face purports to be an account between the "estate of William E. Earle and the Causten estate." As will appear by an inspection of the account, it embraces not only fees received by William E. Earle in his lifetime, under the Appropriations Act of March 3, 1891, but it covers fees received by the estate of William E. Earle under the Appropriations Act of 1899, showing beyond controversy that the Earle estate recognized its obligation to the Causten estate, not only for fees collected by William E. Earle in his lifetime, but for fees received by his estate after his death.

In addition to this, we submit, as was suggested in the

oral argument, that a question of this kind can not be properly raised in this court under the record. The bill of complaint, which will be found on page 2 of the record, charges that after William E. Earle's death, the Causten estate demanded from the appellant, Henry M. Earle, an accounting of the moneys received by William E. Earle and the Earle estate, and that the account heretofore referred to, beginning on page 95 of the record, and which was filed November 13, 1902, was actually submitted by Henry M. Earle to the administrator of the Causten estate on November 3, 1900, two months before the original bill was filed. This allegation is specifically made in paragraph seven of the bill. In his answer to this seventh paragraph, Henry M. Earle admits that Pickett was engaged in collecting fees under the Appropriations Act of 1899 and in preparing cases as he was obliged to do under the terms of the contract between Waggaman, administrator, and William E. Earle. Nowhere does it appear in the bill or answer, or in any line of the testimony, that anybody ever claimed that the contract between the Causten estate and Earle was abrogated or terminated by William E. Earle's death, and we respectfully submit that if for no other reason this third assignment of error, so called, should be disregarded.

Second.

It is further submitted that under the very terms of the contract referred to, beginning on page 5 of the record, it is manifest that the relation between Thomas E. Waggaman and William E. Earle was not that of lawyer and client. Waggaman, as administrator of the Causten estate, never employed the professional services of William E. Earle, but simply entered into a business arrangement with him by which Waggaman permitted valuable property belonging to the Causten estate to remain in the possession of Earle. He delivered to Earle,

or what was equivalent to delivery, he allowed to remain in the possession of Earle the property which both parties considered to be of considerable value, and in consideration of such delivery, or permission to retain, Earle agreed to pay to Waggaman twenty-five per cent of all fees received, or which should thereafter be received by him in the Spoliation cases, after the deduction of certain expenses enumerated in paragraph two of the contract.

We submit, therefore, that in a business arrangement of this kind, not involving the relation of lawyer and client, it makes no sort of difference whether these fees were collected by Earle or by his estate. After the death of William E. Earle, the Causten papers, so-called, remained in the possession of the Earle estate, who continued to use the papers certainly as late as November 3, 1900, at which time, in the account rendered by William E. Earle, it was stated that Pickett was still preparing cases and collecting fees in other cases which had been favorably passed upon by Congress. It may be admitted for the purposes of the argument, if the administrator of the Causten estate had engaged the services of William E. Earle in the prosecution of these French Spoliation Cases upon a contingent fee, that Earle's death before the cases had been prosecuted to a determination and judgments recovered, that Earle's death may have terminated the contract, but the contract, in question is of an entirely different nature.

For this reason we submit that there is no merit in the appellant's third assignment of error.

Third.

We conceive it to be of absolutely no consequence that the Causten papers, so-called, were valuable or had no value. Both parties to the contract of June 12, 1885,

concede that these papers were of value after they had been in Mr. Earle's possession for a long time. Mr. Earle after the contract considered them of such importance that the stationery of William E. Earle bore the headlines, "The Causten Agency of French Spoliation Claims" (Rec., p. 144).

In 1894 Henry M. Earle writes to Mr. Waggaman, on a letter-head bearing the headlines "Successor of William E. Earle," that Mrs. Earle had given him, Henry M. Earle, charge of the entire matter, and no suggestion was then made or ever made by William E. Earle in his lifetime, or by Henry M. Earle after his father's death, that these papers were worthless, and no suggestion of the kind was made until the taking of testimony after this litigation had commenced.

For all these reasons we respectfully submit that the third assignment of error is without merit.

Respectfully,

T. PERCY MYERS,
M. J. COLBERT,
S. T. THOMAS,
For Appellees.

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IN THE

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OCTOBER TERM, 1907.

Nos. 12 and 382.

HENRY M. EARLE, ADMINISTRATOR DE BONIS NON, WITH THE WILL ANNEXED, OF WILLIAM E. EARLE, DECEASED, APPELLANT,

vs.

T. PERCY MYERS AND JOHN J. HAMILTON, ADMINISTRATORS DE BONIS NON, WITH THE WILL ANNEXED, OF JAMES H. CAUSTEN, DECEASED, APPELLEES.

BRIEF ON BEHALF OF APPELLEES.

T. PERCY MYERS,
M. J. COLBERT,
S. T. THOMAS,
Attorneys for Appellees.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1907.

Nos. 12 and 388.

HENRY M. EARLE, ADMINISTRATOR DE BONUS NON, WITH THE WILL ANNEXED, OF WILLIAM E. EARLE, DECEASED, APPELLANT,

vs.

T. PERCY MYERS AND JOHN J. HAMILTON, ADMINISTRATORS DE BONUS NON, WITH THE WILL ANNEXED, OF JAMES H. CAUSTEN, DECEASED, APPELLEES.

BRIEF ON BEHALF OF APPELLEES.

The statement of the case as presented by the brief of the appellant is substantially correct.

In the statement of facts contained in the appellant's brief counsel have in several instances drawn erroneous conclusions from the testimony presented by the record, but it will not serve any purpose to go into detail at this point as each and all will be fully discussed and pointed out as the argument of the case proceeds upon the errors assigned.

ARGUMENT.

The appellant has stated two general grounds as assignment of error in his brief, and then divides each into several subdivisions. The first general assignment of error is to the disallowance of the amounts paid by William E. Earle during his lifetime and prior to the appropriation of Congress for the payment of certain French spoliation claims on March 4, 1899, to certain alleged special attorneys, as follows:

To O. D. Conger & Son.....	$2,000 00
To Philip B. Thompson.....	2,500 00
To Walter S. Hutchins.....	5,200 00
To Frank P. Morgan.....	150 00
To H. Worthington.....	2,000 00
To W. H. McAdoo.....	100 00
To H. D. Money.....	1,000 00
To Robert B. Bradford.....	3,608 05
To Dudley & Michener.....	2,000 00
To C. S. Shelley.....	1,000 00
Total.....	19,558 05

Of these amounts all were disallowed by the auditor of the Supreme Court of the District of Columbia under the original reference, except the sum of $2,000 to O. D. Conger & Son; $2,500 to Philip B. Thompson, and $2,000 to Dudley & Michener, which said amounts were allowed by the auditor in the original account and remained therein until the hearing on appeal in the Court of Appeals of the District of Columbia. The case was presented to the Court of Appeals upon cross-appeals of both the Earle estate and the Causten estate, and a number of assignments of error were presented upon exceptions taken to the original auditor's report by both parties. The decision of the Court of Appeals sustains the overruling of the appellant's exceptions by the Supreme Court of the District of Colum-

bia, and reverses the decree of the Supreme Court of the District of Columbia in so far as it overrules the exceptions of the Causten estate to the allowance of the items of $2,000 to O. D. Conger & Son; $2,500 to Philip B. Thompson, and $2,000 to Dudley & Michener. In disposing of these items the Court of Appeals (Rec., p. 204) says:

> "The sixth, seventh, and eighth exceptions of the complainant are to the three several allowances—one for $2,000, a second for $2,500, and a third for $2,000—to three several persons, claimed to be for '*professional services*' rendered by them. We find it impossible to read the record without coming to the conclusion that these alleged services were of the kind known as 'lobbying services.' The proof, indeed, in regard to them is of the vaguest character, and utterly insufficient in any event to support them as proper charges in this accounting. But, so far as it goes, it points unmistakably to those illicit services, personal influence and personal solicitation, which the courts have branded as improper for their consideration, and for which they will not allow recovery. It is a peculiar fact that no one of the persons to whom these several sums are claimed to have been paid was called to testify in regard to them; although they were all accessible and could easily have been summoned. The inference from this omission is not favorable to the defendant's claim for these allowances.
>
> "There is some feeble pretense that one of the parties prepared a brief for use before one of the committees of Congress, but it is the merest pretense and wholly unworthy of consideration. There is no reason to suppose that a copy of the brief could not have been produced if it ever existed, nor does it appear what exigency there was for the preparation of such a brief.
>
> "If these alleged services were legitimate and professional, it is not apparent why they could not have been rendered by Mr. Earle himself. He was

> fully competent, and his contract with Waggaman included them. If, on the contrary, they were of the lobbying kind and illegitimate, they should not be allowed. In either case they are improper charges against the interest represented by the complainant. In fact, as disclosed by the record, Mr. Earle, during his lifetime, in his communications with some of the persons interested in the Causten estate, admitted the true character of these expenditures, and sought in vain to have them legitimated and recognized."

In support of this first general assignment of error the appellant presents seven separate propositions and contentions, and it is our purpose to discuss them seriatam. It being clearly established by the record that the alleged professional services rendered by the persons to whom sums of money are alleged to have been paid amounting to $19,558.05, as per list heretofore set forth, were of the same general character and nature, the points presented and discussed in support of their disallowance will apply to all except where the individual case may be particularly mentioned in reference to the evidence relating thereto.

The first contention is "*because they were proper payments under the terms of the agreement between the parties.*"

The allowance of these items is claimed by the appellant under the third paragraph of the contract of June 12, 1885, between Thomas E. Waggaman, as administrator of the Causten estate, and William E. Earle (Rec., p. 6), under the following clause:

> " . . . such as clerk hire, printing, advertising, and the compensation to other attorneys necessarily associated with him and in whose compensation said Earle does not share."

To entitle the appellant to an allowance for the amounts alleged to have been paid to the parties in question under the above clause the appellees respectfully submit that the *onus* is upon the appellant to affirmatively and satisfactorily establish by the evidence that the parties were attorneys *necessarily associated* with said Earle in the actual prosecution of the said claims in the usual and legitimate course of practice in the prosecution of such cases. The contract does not place the question or propriety of associating other attorneys simply in the discretion of Earle, but it particularly and unquestionably requires that a *necessity* for the services of other attorneys must first exist before Earle is authorized to engage their services. The accepted dictionary definition of *necessarily* is "By necessity; in such a manner that it can not be otherwise; indispensably; by unavoidable consequence." Can it possibly be contended that Mr. Earle, a lawyer and scholar of more than ordinary ability, used or understood the word *necessarily* in any other way than meaning what it clearly denotes—the existence of a necessity as a condition precedent? However, for the purposes of this case it must be construed in its ordinary and reasonable sense, as the record does not disclose any reason for doing otherwise.

The appellees respectfully submit that the record in this case wholly fails to show or establish the slightest *necessity* for the employment of any of said parties. The only testimony touching upon the point is that of W. T. S. Curtis (Rec., p. 57), as follows:

> "Q. What services did Conger & Son render?
> A. They prepared a general argument on the question of the liability of the United States, in support of the decisions of the court, and this brief was used before the committees of Congress."

In testifying as to the services rendered by C. R. Shelley he says (Rec., p. 59):

> "Q. Do you know C. R. Shelley, and do you know what he did to assist Mr. Earle in the prosecution of these cases?
>
> A. Yes, sir; he, like the other gentlemen, appeared before the committees, and argued the legal questions, and were often, time and time and again at the office of Mr. Earle, talking with him and preparing themselves for the presentation of these cases, and Mr. Earle coached them. The act of Congress sending these cases to the Court of Claims did not make them judgments, but left it to Congress to say whether the findings of the court should be paid, and if it had not been for these services we never would have got a cent."

His testimony as to the services of Philip B. Thompson (Rec., p. 60) is as follows:

> "Q. What services did Mr. Thompson render?
>
> A. He went before the committees and argued the question as to the legal liability of the Government.
>
> Q. These cases had all been certified to Congress by the Court of Claims?
>
> A. Some of them.
>
> Q. And there had been printed petitions in the Court of Claims?
>
> A. Yes, sir.
>
> Q. Was all of the evidence in the cases printed?
>
> A. I think not all.
>
> Q. Were there printed briefs and arguments in the cases?
>
> A. Yes, sir.
>
> Q. Do you know whether Conger & Son had the benefit of these briefs and arguments?
>
> A. I think so.
>
> Q. Did they add to the arguments?
>
> A. I think so in some cases.
>
> Q. Do you know what these cases were?
>
> A. There was one of the attorneys found data

showing that none of these decrees by the French courts were based on the ground that the United States and France were at war and refuted their statements in Congress.

Q. Which one of the attorneys found that out?

A. I can not remember just now.

Q. Was that the only new fact in the case that was not in the Court of Claims?

A. Oh, no; Congress had ignored the judgment of the Court of Claims and it was necessary to present additional arguments in addition to what the court had said."

Now, this is the whole of the testimony given by the witnesses on behalf of the appellant which throws any light whatsoever upon the question of the existence of the slightest *necessity* for the services of the parties to whom the sum of $19,558.05 was paid by Mr. Earle out of the appropriation of 1891 to special attorneys alleged to have been *necessarily associated* with Mr. Earle, and which caused a deficit of about $18,000 between expenditures and receipt of fees under that appropriation.

It must be remembered that Mr. Curtis was associated with Mr. Earle in the prosecution of these cases for many years, having gone with him in 1885 (Rec., p. 61), and these special services are alleged to have been rendered in securing the passage by Congress of the appropriation of 1891, yet this witness who has been engaged exclusively and continuously associated with Mr. Earle in the prosecution of these cases for six years prior to the year 1891, can not even give a clear and fair statement of any one special service rendered by any of the parties alleged to have been *necessarily associated* with Mr. Earle under the terms of the contract with the Causten estate and for which the appellant would have the Causten estate charged with 25 per cent of $19,558.05. Much less can such flimsy testimony be expected to affirmatively establish the actual necessity for the employment of the

parties to do work which Mr. Earle was found to perform under the terms of his contract.

Upon this point the record at pages 106 to 115 presents a very significant fact in relation to the necessity of employment of special attorneys to argue the question of the legal liability of the United States Government in the premises before the committees of Congress. The record shows that out of about one hundred cases therein set forth the law firm of Shellabarger & Wilson, were associated with Mr. Earle, in about seventy-five cases and under the contract existing between them entitled to two-thirds of the fees in nearly all of the cases, which fees approximate about $13,000. Is it not a fair presumption, nothing appearing in the record to the contrary, that the firm of Shellabarger & Wilson were to do a portion of the necessary legal work, and had Mr. Earle felt himself incompetent to argue and successively present any legal question involved, is it not reasonable to assume that he could have had the services of Shellabarger& Wilson under the terms of their contract? That firm, composed as it was of the Hon. Samuel Shellabarger and Hon. Jeremiah M. Wilson, were the peers of any lawyers engaged in the prosecution of this particular class of cases. Were it possible to make a composite human entity of all of the alleged special attorneys to whom it is claimed Mr. Earle paid the total sum of $19,558.05, there would yet be but a pigmy compared with the giant legal ability of Messrs. Shellabarger & Wilson. The alleged question of the legal liability of the United States was but a single question equally applicable to each and all of the cases. Settled for one, settled for all.

The appellant to establish his right to an allowance for the items in question must not only affirmatively prove the *necessity* for the services of the alleged special attorneys but must also affirmatively prove by competent testimony the actual rendition of said services and

the particular character of the same, as well as the reasonableness of the amount paid for said services.

Upon an examination of he record we are again met with an extraordinary and complete failure to meet with the ordinary requirements of the law of evidence in the premises. The only pretence to prove or establish any of the necessary facts is contained in the testimony of Theodore J. Pickett and W. T. S. Curtis, both of whom should have been able to testify to the necessary facts from personal knowledge had there been the slightest possibility of the existence of the same. The testimony of Theodore J. Pickett (Rec., p. 441) is as follows:

"By Mr. GITTINGS:

Q. State whether or not you know the character of the services rendered by the several attorneys designated in the items in the book?

A. Yes; part of the services performed was the writing of briefs, consultation, and assistance rendered Mr. Earle in that manner. These consultations were held in his office, and at a number of them I was present."

(Objection to admissibility of testimony by counsel for Causten estate.)

"Mr. GITTINGS: We will rest at that."

Again (Rec., pp. 63–64, 73, 74, 75) he testifies as follows:

"By Mr. GITTINGS:

Q. Do you know Omar D. Conger & Son?

A. Yes, sir; very well.

Q. Do you know whether they were employed by Mr. Earle in the prosecution of these cases?

A. I do.

Q. Do you know whether Mr. Earle paid them anything for their services?

A. I do.

(Mr. Thomas reserves an objection.)

WITNESS: I know he gave them checks for various amounts, either Mr. Conger or his son, and Mr. Earle told me at the time the checks passed to put it down in the book of accounts.

Q. Did he tell you the amounts at that time?

A. Yes, sir.

Q. Do you know Phil. B. Thompson and whether he was employed by Mr. Earle in the prosecution of these cases?

A. Yes, sir; he was.

Q. Do you know whether he was paid for his services and how much?

A. Yes, sir; in the same way as the Congers.

Q. Do you know Walter S. Hutchins?

A. Yes, sir.

Q. Do you know what services he performed?

A. I know that he was paid because I saw the checks but do not carry the amounts in my mind.

Q. Do you know Frank P. Morgan.

A. Yes, sir.

Q. Do you know whether Mr. Earle paid him anything?

A. I think he paid him $150.

Q. Did you see him pay it?

A. Yes, sir; my impression is very strong that I saw Mr. Earle give him the check.

Q. Do you know William McAdoo?

A. Yes, sir.

Q. Do you know whether he rendered any services?

A. The payment to Mr. McAdoo was made as a compensation for having Mr. Earle retained in some cases. It was a part of the fee. I know it was for services in the French spoliation cases.

Q. Do you know H. D. Mooney?

A. Yes, sir.

Q. Do you know whether he was employed and paid by Mr. Earle?

A. Yes, sir; he was. I took checks to him myself on several occasions.

Q. Do you know whether it was the amount stated?

A. It was the amount stated in the books.

Q. You carried the checks to him?

A. I remember one time I did so.

Q. Do you know R. B. Bradford?

A. Yes, sir.

Q. Did he render any services?

A. Yes, sir.

Q. The amount shown in the books as paid to him is correct?

A. Yes.

Q. Do you know Dudley and Michener?

A. Yes, sir; I know of them but do not personally know them.

Q. Do you know whether they rendered any services to Mr. Earle?

A. Yes, sir.

Q. Were they paid?

A. I know that Mr. Earle wrote out checks for them and told me to charge them up.

Q. Do you know C. R. Shelley?

A. Yes, sir.

Q. Did he render any services to Mr. Earle?

A. Yes, sir. The amount stated in the book as paid to him is correct.

Cross-examination.

By Mr. THOMAS:

Q. Did you testify about these large sums paid to Conger & Son and others?

A. Yes, sir; I testified about all of them.

Q. Do you know of your own personal knowledge that Conger & Son made any argument and filed any printed briefs before Congress in these claims?

A. I have seen the printed briefs prepared by Conger & Son.

Q. Before what committees?

A. I suppose the Committee on Claims.

Q. Do you know whether Mr. Phil. B Thompson made any oral argument before the committee?

A. I can not recall any particular time on

which he did so, but have no doubt but what he did so.

Q. You have no personal knowledge of it?

A. I was not present.

Q. You know Walter S. Hutchins?

A. I can not say that I do very well.

Q. Do you know whether he is a lawyer?

A. I do not.

Q. Do you know of your own knowledge whether he ever made any oral arguments before Congress or the committees, or submitted any printed briefs in Ergood & French spoliation cases?

A. No, sir.

Q. Now, as to Frank P. Morgan, what do you say he did?

A. I testified that Mr. Morgan was employed to assist in the claims, and that he was paid the amount as charged.

Q. What do you know of his services?

A. I do not know further than that he was employed to advocate the passage of the bill by such arguments as he could bring to bear.

Q. Is he a lawyer?

A. I do not know.

Q. Do you know of your own personal knowledge whether he made any arguments or filed any briefs?

A. I was not present when he did so.

Q. Do you know H. W. Worthington?

A. I know him by sight.

Q. Do you know whether he is a lawyer?

A. He claims to be a lawyer.

Q. Do you know of your own personal knowledge that he made any oral arguments before the committees or filed any briefs before the committees of Congress in Ergood & these claims?

A. I was not present when he did so.

Q. Do you know William McAdoo?

A. Yes, sir.

Q. Do you know of your own personal knowledge whether he ever made any oral arguments or

filed briefs before the committees of Congress in Ergood and these cases?

A. I do not. I have heretofore testified that the services Mr. McAdoo rendered was in placing a case in Mr. Earle's hand.

Q. Now, as to H. D. Money, have you any personal knowledge that he made any oral arguments or submitted any printed briefs in support of these claims before committees of Congress?

A. I was not present when he did.

Q. Now as to the payment of R. B. Bradford, was he a lawyer?

A. I do not know.

Q. Do you know whether he made any oral argument or submitted any briefs before the committees in regard to the French spoliation claims?

A. I know that Mr. Bradford went to the Capitol on numbers of occasions as well as these other gentlemen mentioned, for the purpose of presenting the claims before the committees or or the special committees, and whether they did or did not make arguments I do not know as I was not present; I do know that they went for that purpose.

Q. But whether he performed any service you do not know?

A. I know that he went to the Capitol to render that service and that is the same as to the other gentlemen.

Q. What is the amount due to T. J. Pickett for?

A. For clerical services performed in the office of Mr. Earle up to the time I was admitted to the bar, and after that I was admitted as associate counsel. I received $100 a month.

Q. When you rendered clerical services how much did you receive a month?

A. The same.

Q. How many months were you employed?

A. I went in Mr. Earle's office, I think, in June or July, 1885, and staid there with him until his death, with the exception of several months, when the matter was not looking very promising, when

I left and opened an office with James L. Pugh, Jr., and then after the appropriation of 1891 was made I returned with Mr. Earle.

Q. As to this item of two thousand dollars to Dudley & Michener, do you know of your own personal knowledge that they rendered any services in making any oral argument or submitting any briefs to the committees in Ergood & these claims?

A. I was not present.

Q. The payment to C. R. Shelley, do you know of your own personal knowledge whether Gen'l Shelley rendered any legal services before the committees of Congress?

A. My knowledge of his services is exactly like that of the others."

It must be conceded that this testimony of a man who must of necessity have been thoroughly familiar with all the facts and transactions connected with the prosecution of these cases in Earle's office, wholly fails to establish the validity or reasonableness of the disputed items.

The one other person, after the death of Mr. Earle, who could be expected to furnish the necessary proof is W. T. S. Curtis, of whose testimony we have heretofore called attention. His testimony as to the services rendered by the alleged special attorneys (Rec., pp. 57–58–59–60–61–62) is as follows:

"Q. What services did Conger & Son render? A. They prepared a general argument on the question of the liability of the United States, in support of the decisions of the court, and this brief was used before the committees in Congress.

Q. When were these French spoliation claims first presented to Congress for payment; when was the first bill certified to Congress for the payment of them?

A. I think some time late in 1886 or beginning of 1887, just before the expiration of the limitation.

Q. At how many sessions of Congress were bills presented for the payment of claims certified to Congress for payment, by the Court of Claims prior to the appropriation being made?

A. After the awards went up, which I think was late in 1886, continuous effort was made every session until the first act was passed on the 3d of March, 1891.

Q. Continued effort was made by whom?

A. Mr. Earle.

Q. When was Mr. Conger employed by Mr. Earle to assist him?

(Mr. Thomas objects.)

A. I can not tell just the date but feel assured it was before 1891, because he was paid shortly after the act was passsed, when Mr. Earle got the money.

Q. State if you know whether the contract with Conger & Son was based upon the appropriation or by reason of any funds that should come into Mr. Earle's hands by reason of the appropriation?

(Mr. Thomas objects and the objection is sustained.)

Q. State whether the contract with Conger & Son was, or was not a contingent fee.

(Mr. Thomas objects and the objection is sustained.)

Q. State what the terms of the contract were, if you know?

(Mr. Th mas objects.)

A. All that I know is that in my conversations with Mr. Earle and Mr. Conger I knew they were to be paid on a contingency, I never saw the contract but know what the respective parties told me.

(Mr. Thomas objects to the answer and the objection is sustained.)

Q. State what if any conversations you heard between Mr. Conger and Mr. Earle in reference to the contract?

A. I heard them discussing the possibility of the recovery of this money, and how they were to be paid when the act passed, and when it did pass he was paid.

(Mr. Thomas objects to the testimony and the objection is sustained as to the last part of the answer.)

Q. Do you know Phil. B. Thompson, and whether he was at any time employed by Mr. Earle to assist him in the French spoliation matters?

A. Yes, sir; I know that he was, during the same time as these other parties were retained prior to the appropriation.

Q. Do you know whether any money was paid to him by Mr. Earle for his services?

A. I do.

Q. How much?

A. I have seen Mr. Earle pay him separate checks, and Mr. Thompson has told me he was paid twenty-five hundred dollars.

(Mr. Thomas objects and the objection is sustained.)

Q. Do you know Walter S. Hutchins?

A. Yes, sir; I know him.

Q. Was he ever employed by Mr. Earle in the prosecution of these cases?

A. I know that he was.

Q. Do you know whether he was ever paid for his services, and if so, how much?

(Mr. Thomas objects.)

A. I know he was paid but just how much I can not say.

Q. Do you know Frank P. Morgan?

A. Only by sight. I have seen him in Mr. Earle's office often.

Q. Do you know whether he assisted Mr. Earle in the prosecution of these cases?

(Mr. Thomas objects.)

A. I have often seen him in the office of Mr. Earle but what he did I do not know.

(Mr. Thomas states that he reserves an objection to all testimony touching the several claims for credit by payment to other counsel or experts employed by Mr. Earle in the prosecution of the French spoliation cases.)

Q. Do you William McAdoo?

A. I know of him but not personally and do not know anything about his particular connection with this matter.

Q. Do you know W. H. Worthington?

A. I do.

Q. Do you know whether he assisted Mr. Earle in the prosecution of these cases, and how much he was paid?

A. Yes, sir; I have seen Mr. Earle give him checks, but the exact amount I do not know.

Q. Do you know H. D. Money, and whether he assisted Mr. Earle?

A. Yes, sir; he did.

Q. Did you ever see Mr. Earle pay him money?

A. No, sir.

Q. Do you know Robert B. Bradford?

A. Yes, he is now dead.

Q. Did he assist Mr. Earle in the prosecution of these cases?

A. Yes, sir.

Q. Did you see Mr. Earle pay him any money?

A. Yes, sir; I know that he paid him money, thousands of dollars. Mr. Earle drew the checks and paid them in my presence.

Q. This accounts hows $6,150.00 paid you. Was that for services under the terms of your contract with Mr. Earle?

A. That was for services under the contract and

services rendered to him in the prosecution of these cases.

Q. Do you know Dudley & Michener, and did they assist Mr. Earle in the prosecution of these cases?

A. Yes, sir; they did.

Q. Do you know whether he ever paid them anything for these services?

A. I never saw the checks delivered or payments made to these gentlemen.

Q. Do you know C. R. Shelley, and do you know what he did to assist Mr. Earle in the prosecution of these cases?

A. Yes, sir; he, like the other gentlemen, appeared before the committees and argued the legal questions, and were often, time and time and again, at the office of Mr. Earle, talking with him and preparing themselves for the presentation of these cases, and Mr. Earle coached them. The act of Congress sending these cases to the Court of Claims did not make them judgments, but left it for Congress to say whether the findings of the court should be paid, and if it had not been for these services we would never have got a cent.

Q. Did Mr. Earle spend much time before the courts himself?

A. Yes, sir; for some years.

Q. State whether or not, in your opinion, the compensation paid these gentlemen was reasonable.

(Mr. Thomas objects.)

(The auditor states that the question will be admitted subject to the general and special objection.)

A. I consider the amounts very reasonable, in view of the labor performed and results obtained. If it had not been done the fate of the French spoliation claims would have been doomed.

Q. Do you Know L. B. Clarke, and whether he assisted Mr. Earle in any capacity in the French spoliation matters?

A. Yes, sir; this party assisted greatly in hunting up manifests and records in the customs houses.

Q. Were they such services as were essential to the prosecution of the cases?

A. All of these were; yes, sir.

Cross-Examination.

By Mr. THOMAS:

Q. Who was Omar D. Conger?

A. A very prominent lawyer; formerly a member of Congress from Michigan.

Q. He had been a Senator, had he not?

A. Yes, sir; but was practicing law in this city.

Q. Who was Phil. B. Thompson?

A. Quite a prominent lawyer of this city, formerly from Kentucky.

Q. He had been a member of Congress at one time?

A. Yes, sir.

Q. Have you any personal knowledge of this alleged payment of $2,000.00 to Omar D. Conger?

A. Yes, sir; I saw the checks paid to Mr. Conger, and remembered once or twice seeing him pay cash to the son.

Q. How much cash did you see him pay?

A. I can not say the amount.

Q. How many checks?

A. I can not remember.

Q. Which one of the Congers, father or son, did he give these checks to?

A. They were handed to one or the other.

Q. Do you know of your own knowledge of money paid to Phil. B. Thompson?

A. Yes, sir; he was paid by check or cash. I couuld not say how much by cash or how much in checks.

Q. What services did Mr. Thompson render?

A. He went before the committees and argued the question as to the legal liability of the Government.

Q. These cases had all been certified to Congress by the Court of Claims?

A. Some of them.

Q. And there had been printed petitions in the Court of Claims?

A. Yes, sir.

Q. Was all the evidence in the cases printed?

A. I think not all.

Q. Were there printed briefs and arguments in the cases?

A. Yes, sir.

Q. Do you know whether Conger & Son had the benefit of these briefs and arguments when they made their arguments?

A. I think so.

Q. Did they add to the arguments?

A. I think so, in some cases.

Q. Do you know what those cases were?

A. There was one of the attorneys found data showing that none of these decrees by the French courts were based on the ground that the United States and France were at war and refuted their statement in Congress.

Q. Which one of the attorneys found that out?

A. I can not remember just now.

Q. Was that the only new fact in the case that was not in the Court of Claims?

A. Oh, no; Congress had ignored the judgment of the Court of Claims and it was necessary to present additional arguments in addition to what the court had said.

Q. Who was Walter S. Hutchins?

A. A son of Stilson Hutchins.

Q. What did he do?

A. I think he went before the committees.

Q. Do you know whether he is a lawyer?

A. I can not say.

Q. Frank P. Morgan, what did you say he did?

A. I do not know much about him.

Q. You don't know whether his services were worth $150.00?

A. I could not say of my own knowledge.

Q. H. W. Worthington, do you know him?

A. Yes, sir; he is a lawyer.

Q. Does he practice in the courts or at the Capitol?

A. I could not say.

Q. You never came in contact with him around the court house?

A. I could not say.

Q. Do you know whether Mr. Earle paid him $200.00 in these cases?

A. I could not say.

Q. Where was he?

A. In Mr. Earle's office.

Q. Are you personally acquainted with William McAdoo?

A. I can not say that I am.

Q. You don't know whether $100 was paid to him?

A. I could not say.

Q. Do you know Mr. H. D. Money?

A. Yes, sir; he has been a member of Congress and is now a Senator.

Q. What had he to do with these cases?

A. The same as the rest of them.

Q. Do you know anything about this alleged payment of one thousand dollars to him?

A. I do not.

Q. Now this payment to Robert B. Bradford?

A. I know that I saw checks given to him a good many times.

Q. How many checks were paid to him?

A. I can not say just how many.

Q. Do you know for how much these checks were?

A. I could not say at this date.

Q. Was Mr. Bradford a lawyer?

A. I think so.

Q. Where did he practice?

A. Around the Capitol.

Q. Did he have any business around the courts here?

A. I could not say.

Q. You say you first went with Mr. Earle in 1885, how old were you at that time?

A. Nearly thirty years; I had been at the bar six years and had been with Shellabarger & Wilson at that time.

Q. Didn't you go as a clerk at that time?

A. I was paid practically as a clerk to perform legal services.

Q. He paid you fifty dollars a month?

A. Fifty dollars cash and one hundred dollars more.

Q. And you worked with Mr. Earle on these cases?

A. Yes, sir.

Q. Do you know where Dudley & Michener rendered services.

A. All in Congress before the committees before the passage of the act of 1891.

Q. What committee?

A. The judiciary and Appropriations Committees in both the House and Senate.

Q. Were you personally acquainted with Mr. Shelly?

A. Yes, sir; I know him.

Q. Formerly a member of Congress?

A. I do not know.

Q. Should that be C. R. or C. M. Shelly?

A. I could not say. Mr. Shelly has lately been with C. B. Butler, of South Carolina.

Q. Do you know whether one thousand dollars was paid to him?

A. I do not know.

Q. Where was his work?

A Around the committees."

The absurdity of this testimony is emphasized by a question asked Mr. Curtis (Rec., p. 50) at the close of his examination-in-chief, after he has virtually admitted that he had no personal knowledge of the services rendered as follows:

"Q. State whether or not, in your opinion, the compensation paid these gentlemen was reasonable?"

The question is startling under the circumstances, but the answer is more so.

> "A. I consider the amounts very reasonable in view of the labor performed and the results obtained, if it had not been done the fate of the French Spoliation Claims would have been doomed."

It will no doubt be argued that the death of Mr. Earle prior to the filing of this suit deprived the appellant of the only testimony possible to establish these facts. That contention is untenable for the reason that all of the alleged special attorneys, with the possible exception of two, were alive and residing in the city of Washington at the time of the hearing of the case before the auditor and could have been summoned as witnesses to prove the necessity for and the character of the services rendered by them. The appellant also strangely failed to produce and offer in evidence a single copy of any of the important briefs alleged to have been prepared by these *necessarily associated* attorneys. Considering the fact that Earle and the Earle estate continued the prosecution of these cases for many years after 1891, it is a fair presumption that copies of such important documents were preserved, if, in fact, they were ever in existence. These important omissions must be given great weight in the consideration of the issue involving the allowance of these particular items.

As to the contention that Waggaman, as administrator of the Causten estate, had notice of the payment of these items out of the appropriation of 1891, and made no objection is wholly untenable and not supported by the testimony. Mr. Schriver, one of the Causten heirs, in his testimony (Rec., p. 81) distinctly says that he met Mr. Earle at his office on the day the act of 1891 was passed and that Mr. Earle spoke of having expended $24,000 in pushing

and lobbying the bill through Congress, and that he thought it only proper that the Causten heirs should pay one-fourth of the amount. That after some of the Causten heirs had declined to consent he stated that he would fight the matter in the courts.

Miss Josephine Young, another of the Causten heirs, in her testimony (Rec., p. 84), says that she had a conversation with Mr. Earle a day or two after the passage of the act of 1891, and that—

> "he said that he had been obliged to pay this $24,000 to get the bill through, and said we ought to pay part of the expenses. He said that he could not force the payment, but that we ought at least to pay one-fourth of the expenses. I declined, however, to do so."

Mr. Thomas E. Waggaman, administrator of the Causten estate, testifies (Rec., p. 50):

> "I came in several times with Mr. Williamson to examine the books and found it very difficult to get a satisfactory statement. We found money had been paid to various lawyers at various times and objected to these payments among other things. In fact, we objected to all of it."

These visits to the office of Mr. Earle were made during his lifetime. The testimony of Mr. Curtis (Rec., p. 58) states that these fees were to be paid after the act passed. The act was passed March 4, 1891, and Mr. Earle died August 13, 1894. Allowing the necessary time to elapse between the passage of the act and the payment of the claims, it will readily be seen that Waggaman made objection within three years after the payment of the same, as the objection was made during the lifetime of William E. Earle (Rec., p. 79).

The contention of counsel that the fact that Waggaman, administrator of the Causten estate, having on

several occasions attempted to ascertain the condition of affairs by reason of the default of Earle in furnishing an account every six months in accordance with the terms of his contract (Rec., p. 6) by examining the books in Earle's office constituted an account stated is too absurd for serious argument, especially in the face of the testimony of Waggaman (Rec., p. 50) wherein he states particularly that he at the time objected to the items in dispute.

The next contention, i. e.—

> "(*d*) because the contract between the appellant's testate and the appellee was not under seal and required an accounting every six months; and the record discloses that the appellee had been informed and had ascertained from the books by reason of payments to the special counsel employed to assist in the prosecution of these claims there was no fund in the hands of the appellant's testate for distribution and appellee allowed more than three years during the life of appellant's testate and seven years after his death to elapse before filing the present suit,"

is equally as frivilous. The appellant in his answer to the seventh paragraph of the bill of complaint destroys all reason to such contention, to wit:

> "That no payment was made to the complainant on account of the same for the reason stated in said parapraph, namely, that it was agreed by and between the said William E. Earle and the complainant that when other fees had been paid so as to make a partial accounting of such matters, all differences would be settled by agreement or otherwise between the parties, and the defendant admits that the matters thus stood until he was appointed administrator in 1895."

The next contention is predicated upon the erroneous theory that the fees collected under the act of 1891 was

a fund created by the efforts of the alleged special attorneys, and that the appellees are attempting to assert a right to participate in that fund. No such fact can possibly be read into the record. The appellees in this suit are simply insisting upon a proper accounting of the subject-matter of the contract of June 12, 1885, *i. e.* the fees received by William E. Earle in the prosecution of the cases mentioned in said contract, of which appellees are entitled to receive 25 per cent after the deduction of certain expenses clearly and particularly set forth in said contract.

The authorities cited by counsel in support of their theory are irrelevant. All of the cases involved the question of "lobby" services in contracts between attorney and client and between copartners in the distribution of a fund created by the partners engaged in an unlawful enterprise.

Brooks *vs.* Martin, 2 Wall., 7;
McBlair *vs.* Gibbes, 17 How., 232;
Knut *vs.* Nutt, 200 U. S., 12, and
Hazleton *vs.* Sheckells, 202 U. S., 71.

There is an attempt on the part of counsel for appellant to urge the plea of the statute of limitations and of laches, but neither are applicable to the facts as presented by the record in this case. By virtue of the contract of June 12, 1885, William E. Earle undoubtedly became a trustee for the Causten estate to account for 25 per cent of the fees received by him under the terms of the contract, and the statute of limitations can have no application. As to laches, the facts, as presented by the record rebut any presumption of laches on the part of the Causten estate. The agreement between William E. Earle and Waggaman as admitted in the appellant's answer to paragraph seven of the bill of complaint (Rec.,

p. 8), relieves the Causten estate of the charge down to the year 1895. There having been no appropriation after 1891 (when according to the contention of the appellant there was nothing for distribution, the expenditures having exceeded the receipts by $18,000) until 1899, and all parties having knowledge of this fact it would have been a senseless and useless action on the part of Waggaman to have demanded an accounting and distribution. Immediately after the passage of the act of 1889 making an appropriation for the payment of certain of these cases Waggaman demanding an accounting and upon failure to receive a proper one instituted these proceedings January 2, 1901.

The proper application of the equitable defense of *laches* is stated by this court in Holstead *vs.* Griman, 152 U. S., 412–416, as follows:

> "The length of time during which the party neglects the assertion of his right, which must pass in order to show laches, varies with the peculiar circumstances of each case, and is not, like the matter of limitations, subject to an arbitrary rule. It is an equitable defense, and lapse of time must be so great, and relation of defendant to rights such, that it would be inequitable for plaintiff to assert them."

Cited and approved in Alsop *vs.* Riker, 155 U. S., 461.

William E. Earle having paid the alleged special attorneys in 1891 his and the appellant's right to allowance for same in an accounting with the Causten estate was in no way changed by reason of this suit not having been filed until 1901, unless it be through the default and laches of William E. Earle and the appellant in not having had an account stated every six months as required by the terms of the contract.

There is no error in the allowance to the appellant for compensation paid to Messrs. Pickett and Curtis for services which should have been rendered by William E. Earle under his contract with the Causten estate.

Appellant's second general assignment of error involves the allowance of an amount equal to 15 per cent of the fees received by the appellant on account of compensation paid by the appellant to Messrs. Pickett and Curtis for services rendered after the death of William E. Earle, which services were those contemplated to have been rendered by William E. Earle in the contract with the Causten estate (Rec., p. 5).

Much of the argument of counsel for appellant in their effort to show error in this allowance is of the same character and upon the same lines as that urged in support of their first assignment of error and the appellees respectfully submit that it is as equally untenable in this instance as in the former.

The disagreement arises by reason of the attempt of the appellant to establish the relevancy and competency of a certain contract between the Earle estate and Messrs. Pickett and Curtis (Rec., p. 182) as evidence and binding force in the adjustment of the accounts between the Earle estate and the Causten estate under the terms of the contract existing between them dated June 12, 1885 (Rec., p. 5).

The record shows that shortly after the death of William E. Earle his son, Henry M. Earle, acting for the executrix of the Earle estate, entered into a certain contract with Messrs. Pickett and Curtis (Rec., p. 182) by the terms of which Pickett and Curtis are to render identically the same services performed by William E. Earle during his lifetime in the prosecution of the French Spoliation cases and are to receive as compensation for their services 30 per cent of the fees received by

the Earle estate in certain cases. It is clear from the facts disclosed in the record that the Earle estate intended and did continue the prosecution of these cases in the same manner as during the lifetime of William E. Earle and that it was greatly to the interest of the Earle estate that it should so do.

In 1895, within a year after the death of William E. Earle, the said Henry M. Earle was substituted as administrator d. b. n. c. t. a. of the estate—the executrix having been duly released from her trust—and he is the appellant in this case. The appellant continued in the prosecution of the cases until the passage of the appropriation of March 3, 1899, for the payment of certain of these claims. In 1899 the Earle estate received a trifle over $50,000 in fees from these cases. At all times, from the death of William E. Earle to the present, the Earle estate has recognized the existing and binding force of the contract (Rec., p. 5) between William E. Earle and the Causten estate.

At the hearing before the auditor to adjust the accounts between the Earle estate and the Causten estate the appellant contended that the payment of 30 per cent of said fees to Messrs. Pickett and Curtis, amounting to $15,729.34, was a proper charge to be deducted under the terms of the contract between William E. Earle and the Causten estate before the 25 per cent of the fees should be apportioned to the Causten estate. This was resisted by the appellees, with the result that the auditor allowed but $7,582.39, or 15 per cent, and in his report gives the following reasons for so doing, to wit:

> "A further claim is made in behalf of the defendant which was the subject of additional testimony taken after the reference was first closed. Under the agreement between Henry M. Earle and Curtiss and Pickett of November 23, 1894, the defendant claims to have paid the said

Curtis and Pickett a sum equal to thirty per centum of the fees received by the estate of William E. Earle under the appropiation of March 3, 1899, amounting to $15,164.78. To this claim vigorous objection was made by the counsel for the complainant, and additional testimony here was taken for the purpose of showing what services were rendered by these two gentlemen in connection with the collection of the fees due to William E. Earle or his estate upon the claims included in the appropriation act of 1899. It will be remembered that as to all of these claims the cases in the Court of Claims had been prosecuted to conclusion and findings in favor of the claimant by the court had been transmitted to Congress prior to the death of William E. Earle. All subsequent services rendered in relation to these claims were in the direction of securing from Congress an appropriation of the sum necessary for their payment. There was one additional class of work imposed upon the attorneys for the complainant in relation to some of the claims—that is to say, the necessity of satisfying the Treasury Department of the identity of the claimants or parties entitled to receive the money. The said Henry M. Earle represented the estate of the said William E. Earle to a certain extent in the making of the said contract with Curtis and Pickett and himself and by the said contract agreed in conjunction with the said Curtis and Pickett to continue the collection of these claims and of the interest of the estate of William E. Earle therein. So that we have three competent attorneys engaged in the work of endeavoring to secure from Congress an appropriation for these claims.

After a very careful consideration of the conditions as they appear in the proof, I am of the opinion that the service in question, did not require the time and attention of these three gentlemen, and that it would not be just to impose the burden of the payment to them upon this

case in such manner as to diminish the small fund which will be found due and payable to the complainant. Mr. Henry M. Earle acting as the attorney for the estate would have been competent alone to have performed the service in question, but clearly it could have been performed with the co-operation of one of the two other parties to the contract. I have, therefore, in the accompanying account allowed credit for one-half of the said thirty percentum which is in my judgment a liberal allowance for the present accounting."

In arriving at this conclusion the auditor finds the fact to be that as—

"to all of these claims, the cases in the Court of Claims have been prosecuted to conclusion and findings in favor of the claimant by the court, had been transmitted to Congress prior to the death of William E. Earle. All subsequent services rendered in relation to these claims were in the direction of securing from Congress an appropriation of the sum necessary for their payment. There was one additional class of work imposed upon the attorneys for the complainant in relation to some of the claims—that is to say, the necessity of satisfying the Treasury Department of the identity of the claimants or parties entitled to receive the money. The said Henry M. Earle represented the estate of the said William E. Earle to a certain extent in the making of the contract with Curtis and Pickett and himself and by the said contract agreed in conjunction with the said Curtis and Pickett to continue the collection of these claims and of the interest of the estate of William E. Earle therein. So that we have three competent attorneys engaged in the work of endeavoring to secure from Congress an appropriation for these claims."

This being a finding of fact by the auditor, and two

courts having subsequently reached the same conclusion on the same question of fact, the same must be accepted as correct until it is made clear that their conclusion was erroneous.

Baker *vs.* Cummings, 169 U. S., 189.
Furber *vs.* Ferris, 145 U. S., 132.
Tighlman *vs.* Proctor, 125 U. S., 136.
Kimberly *vs.* Arms, 129 U. S., 512.
Evans *vs.* State Bank, 141 U. S., 107.

The contention that the payment to Messrs. Pickett and Curtis is authorized by the contract between William E. Earle and the Causten estate is untenable. They were not *necessarily associated* with the said William E. Earle, but, on the contrary. rendered only a small part of the services plainly contemplated to be rendered by William E. Earle under the terms of his contract with the Causten estate.

The contention that the contracts of William E. Earle with the several claimants became vitiated by the death of William E. Earle has no place in the present controversy for the reason that the Earle estate realized that it was to the interest of said estate to arrange for a continuance of the contracts, and the contract with Pickett and Curtis was made to accomplish that purpose and no other. That there was no legal obligation on the part of the Earle estate to continue the prosecution of the cases has also been suggested, but is not an issue in this case, and the fact that they did continue the prosecution at a considerable profit to the estate is a sufficient answer to the suggestion for the purposes of this litigation. The Earle estate having elected to continue the prosecution of the cases and avail itself of the benefits of the contract of William E. Earle with the Causten estate by way of the use of the "Causten papers," can hardly be permitted to say in a court of equity: We have enjoyed the

benefit and profit of the use of your property, but you can not expect or require us to fulfill the obligations of the contract made with our testate whereby we were enabled to secure the possession of the same. "He who seeks equity must do equity."

The last contention of the appellant is expressed in the following words, to wit:

> "Because the funds here for distribution having been realized by the services performed by Messrs. Curtis and Pickett under said agreement, it does not lie in appellees' mouth while claiming a right to participate in the fees so realized by virtue of said contract to object at this late day, more than seven years subsequent to the date of the same."

The facts as found by the auditor and affirmed by the Supreme Court of the District of Columbia and the Court of Appeals of the District of Columbia contradict and refute the statement that this fund was created by the services of Messrs. Curtis and Pickett, and show, on the contrary, that the greater portion of the necessary work was done during the lifetime of William E. Earle. The appellees do not pretend to claim a right under the contract of the Earle estate with Messrs. Curtis and Pickett, but rely wholly upon the contract between William E. Earle and the Causten estate.

By this contention the Earle estate admits that it rendered no service in creating this fund, and yet, under the last report of the auditor (Rec., case No. 388, p. 13), it benefited to the amount of 75 per cent of $36,348.82 after the allowance of the payment of 15 per cent of the fees received to Messrs. Curtis and Pickett.

The plain and unvarnished fact is dominant no matter how hard you twist and turn the evidence as disclosed by the record in any effort to promote the interest of one party or the other, *i. e.* that the contract of the

Earle estate with Curtis and Pickett was made for the sole purpose of having Curtis and Pickett complete the work undertaken by William E. Earle and required to be done by him under the contract with the Causten estate.

The fact that these gentlemen represented the Earle estate in securing the passage of the appropriation by Congress in 1899, without an array of special counsel adds material strength to the contention of the appellees that there was no necessity for the employment of the alleged special attorneys prior to the appropriation of 1891, as William E. Earle had the benefit of the services of Curtis and Pickett at that time.

The appellees respectfully submit that the appellant has wholly failed to show any error in finding of fact or conclusion of law contained in the record as presented in this case.

In the case of Baker *vs.* Cummings, 169 U. S., 189, which was an appeal from the Court of Appeals of the District of Columbia, this court said:

> "In entering upon an analysis of the evidence upon this particular subject, we shall be governed by the principle determined by this court in numerous cases—of which Stuart *vs.* Hayden, 169 U. S., 1, decided at the present term is the last expression—that when two courts have reached the same conclusion on a question of fact, their finding will not be disturbed unless it be clear that their conclusion was erroneous."

Again, in Furber *vs.* Ferris, 145 U. S., 132, this court said:

> "This case was referred to a Master in Chancery to take testimony therein 'and to report to this court his finding of fact and his conclusions of law thereon,' and this he did, and the court, after a review of the evidence, concurred in his finding and conclusions. Clearly, then, they are to

be taken as presumptively correct, and unless some obvious error has intervened in the application of the law, or some serious error or important mistake has been made in consideration of the evidence, the decree should be permitted to stand (Tilghman *vs.* Proctor, 125 U. S., 136; Kimberly *vs.* Arms, 129 U. S., 512; Evans *vs.* State Bank, 141 U. S., 107)."

To the same effect are the following decisions of the Court of Appeals of the District of Columbia:

Richardson *vs.* Van Auken, 5 App. D. C., 209.
Grafton *vs.* Paine, 7 App. D. C., 255.
Smith *vs.* American Banking and Trust Co., 12 App. D. C., 192.
Hutchins *vs.* Munn, 28 App. D. C., 271, and
France *vs.* Coleman, 29 App. D. C., 287.

The appellees respectfully submit that the decision of the Court of Appeals of the District of Columbia should be affirmed.

T. PERCY MYERS,
M. J. COLBERT,
S. T. THOMAS,
Attorneys for Appellees.

EARLE *v.* MYERS.
SAME *v.* SAME.

APPEALS FROM THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

Nos. 12, 388. Argued October 15, 1907.—Decided December 2, 1907.

In an accounting for attorneys' fees for collection of claims against the Government this court followed the general rule of affirming a finding of fact made and confirmed by both the courts below unless the same is clearly erroneous and held that certain services were of the character generally designated as lobbying services and could not be allowed.

Where an administrator of an attorney performs services and incurs expenses in completing the business in which his intestate and another attorney were interested he should be allowed therefor and those services and expenses as well as those rendered and incurred by the intestate can be settled in one suit where the account has been treated by both parties as one account.

Where one interested in attorney fees for collection of government claims can expect nothing until the amount adjudged has been appropriated, laches will not be charged against him if he bring the suit for an accounting within a reasonable period after the passage of the appropriation act. In this case two years was not unreasonable.

A decree of the Court of Appeals of the District of Columbia reversing the Supreme Court of the District as to some of the findings of fact and conclusions of law and directing a new decree to be entered in accordance with the opinion is not a final decree and an appeal will not lie therefrom to this court.

THE appeals in the above numbers involve the judgment of the Court of Appeals of the District of Columbia (25 App. D. C. 582, *sub nom. Waggaman* v. *Earle*), which modified the decree of the Supreme Court confirming the report of an auditor. The action was brought by the appellees against the administrator of Earle's estate for an accounting, and after issue joined it was referred to an auditor to state the account upon the pleadings and proof placed before him. The auditor reported in favor of allowing the complainant as due the Causten estate the sum of $7,462.20. After the report had been confirmed by

the Supreme Court, each side took an appeal and the Court of Appeals reversed some of the findings and conclusions of law of the court below, and directed a new decree to be entered, in accordance with the opinion of the court. The defendants appealed from that order to this court, and that appeal is the above number 12.

Fearing that there might be some doubt as to the finality of this decree for the purpose of an appeal to this court, the parties, pursuant to the decree of the Court of Appeals, took the case down to the trial court, which referred it to the auditor, who restated the account in accordance with the direction of the Court of Appeals, to which exceptions were filed by the defendant, which were overruled, the auditor's report confirmed and another decree entered, from which an appeal was taken to the Court of Appeals and there affirmed, and from the decree of affirmance an appeal has been taken to this court and allowed, which is number 388.

The material facts which appear in the record are the following: For many years a series of attempts had been made to secure legislation from Congress looking to the payment of claims made by American citizens for damages arising from illegal seizure of their vessels by the government of France, which the United States had, by treaty, undertaken to pay. Such attempts had been unsuccessful, until at length an act was passed by Congress, chapter 25 of the Laws of 1885 (23 Stat. 283), which provided for the ascertaining of claims of American citizens for spoliation prior to the thirty-first of July, 1801.

During quite a number of years preceding the act of 1885 one James H. Causten, a resident of the District of Columbia, had accumulated papers, which were regarded as of considerable value in facilitating proofs of these claims. Mr Causten died before the passage of the act of Congress, leaving these papers in the hands of Mr. William E. Earle, who was also interested in the prosecution of said claims, and therefore desired the benefit of the use of these papers, and after the act of Congress Mr. Earle and Mr. Waggaman, the administrator of the estate

of Mr. Causten, entered into a contract as of the date of June 12, 1885, by which Mr. Earle was to be allowed to continue in the possession and exclusive use of these papers in the prosecution of the spoliation claims, for which possession and exclusive use he was to pay to the administrator (Waggaman) twenty-five per centum of all fees which he should receive on account of these claims, "after deducting from all such fees received, or which shall hereafter be received by him, the proper expenses incurred by him, since the passage of the act of Congress referring said cases to the Court of Claims in the prosecution of said French spoliation claims, such as clerk hire, printing, advertising, office rent, and the compensation of other attorneys necessarily associated with him, and in whose compensation said Earle does not share. And settlements between said Earle and said Waggaman, administrator as aforesaid, or his successor in office, shall be made every six months, and the proportionate part of said fees due said administrator shall be paid over to said administrator or his successor in office, at such settlement."

Earle agreed to keep true books of account of all fees and retainers received by him, and also of all expenses attending the prosecution of the claims in which he should be engaged as counsel or otherwise, the books of account to be open at all times for the inspection of the administrator, or his successor in office.

Thereafter proceedings were taken by Earle in the Court of Claims towards proving the claims of his clients, and the action of that court recognizing such claims among others, to a certain extent, was certified to Congress, as provided in the act of 1885.

On March 3, 1891 (26 Stat. 897), Congress made an appropriation in payment of a portion of all claims so certified, and out of this appropriation Mr. Earle received as fees up to July, 1893, the sum of about $38,000, while his books showed an expenditure of over $57,000, leaving Mr. Earle some $18,000 behind. Future legislation was expected, which would turn

this deficit into a profit. It was hoped that a further appropriation would be made in 1893, but that hope was not realized. Mr. Earle died in August, 1893, and an administrator was thereafter appointed. No further appropriation was made until August 3, 1899 (30 Stat. 1161, 1191). Under this appropriation the estate of Earle received some $50,000 in fees.

Negotiations for the settlement of the accounts between the administrator of Earle's estate and the administrator of Causten's estate were proceeded with, but proved unsuccessful, when this suit was instituted by the Causten administrator for an accounting. Pleadings were had in due form, and the case was referred to an auditor of the court for a statement of the account, who, after considerable testimony had been adduced, filed his report and found the sum of $7,462.20 to be due from the defendant to the complainant. Exceptions were filed by both parties, which were overruled by the Supreme Court, and the auditor's report was confirmed.

The Court of Appeals modified the decree entered by the Supreme Court, as already stated.

Mr. Henry E. Davis and *Mr. John C. Gittings* for appellant.

Mr. T. Percy Myers and *Mr. Michael J. Colbert*, with whom *Mr. S. T. Thomas* was on the brief, for appellees.

Mr. Justice Peckham, after making the foregoing statement, delivered the opinion of the court.

In making up the account the representative of the Earle estate claimed a credit for the sum of $19,558.05 as part of the proper expenses incurred by or in behalf of defendant in obtaining the appropriations above mentioned. The auditor struck out $13,058.05 of such claimed credit, leaving $6,500 as a proper credit in favor of the administrator of Earle. The thirteen thousand and some odd dollars were stricken out by the auditor because of the fact, as he found, that these moneys

were paid for lobbying services, in efforts to secure the appropriation by Congress, which services he held were contrary to public policy and discountenanced by the courts, and therefore not to be allowed as a proper credit. The balance, $6,500, the auditor held that the proof showed had been paid by the defendant for legal services by the individuals named, and that such services were valuable, and the amount paid was not excessive or unreasonable. This amount consisted of three separate items, two items for $2,000 and one item for $2,500.

Upon the argument in the Court of Appeals the defendants' counsel insisted that the whole nineteen thousand dollars should have been allowed as a proper credit, while the plaintiff's counsel asserted that the disallowance of the thirteen thousand dollar credit was right, but that the court erred in admitting the $6,500 as a proper credit. The Court of Appeals, as we have said, affirmed that portion of the decree in which the auditor disallowed the thirteen thousand dollars claimed for credit, but reversed that portion of the decree by which the auditor allowed the credit of $6,500, and directed the decree to be amended by striking out the above credit for that sum. This was upon the ground that the $6,500 claimed was also illegal. The court said that it was impossible to read the record without coming to the conclusion that these alleged services were of the kind known as lobbying services; that, although proof on the subject was meager, yet so far as it went it tended unmistakably to show the illicit character of the services, being personal influence and personal solicitation with members of Congress, and that courts had branded services of a like nature as improper, and for which no recovery would be allowed.

The auditor before whom the case was tried and who heard the witnesses, while holding that certain of the credit claims were illegal as claims for lobbying services, yet held that these particular claims for services performed by members of the bar, and representing the $6,500 allowed, were for proper professional services, and as such should be allowed. The Supreme

Court of the District confirmed the report of the auditor, and thereby held that the credit claimed for the payment of these services was proper.

After a careful examination of the testimony in the case we are unable to concur with the Court of Appeals on this question. We cannot find any evidence to justify a reversal of the report of the auditor, confirmed as it is by the Supreme Court. The payments were proved to have been made, and there is no evidence of any illegality connected with the services performed sufficient to justify an appellate tribunal in reversing the finding of the auditor and the Supreme Court upon this question of fact. It is unnecessary to embody in this opinion a reference to the testimony in the case or to make extracts therefrom, but it is enough to say that we are satisfied, from a careful perusal thereof, that we are right in the conclusions which we have come to.

As to the thirteen thousand dollar credit which the auditor and the Supreme Court and the Court of Appeals have all disallowed, we are of the opinion that there was sufficient evidence to justify its disallowance. The evidence would seem to justify the finding of the auditor that these particular services thus paid for were of the character generally designated as lobbying services, and in such case it is proper to follow the general rule of affirming a finding of fact made and confirmed by the courts below, unless the same be clearly erroneous.

Again, the auditor disallowed in part a claim of some fifteen thousand dollars, which the defendants assert was paid to two other attorneys for their services, under a special agreement which was made between the administrator of the Earle estate and such attorneys. The auditor made a finding of the facts in regard to such employment, and carefully considered the conditions as they appeared in the proof, and stated that he was of the opinion that the services in question did not require the time and attention of these three gentlemen, and that it would not be just to impose the burden of the payment to them upon this case in such a manner as to diminish the small

amount which would be found due and payable to the complainant. He therefore in the account allowed a credit for but one-half of the amount, which he said was in his "judgment a liberal allowance for the present account." Counsel for the defendants have failed to show from the evidence in the record that this item was improperly disposed of by the auditor.

As to the alleged laches on the part of the complainant in bringing this suit, we think the courts below have committed no error in their judgments. The evidence showed that during the time of the life of Mr. Earle, although the books of account were quite meager, yet such as there were had been examined by the administrator of Causten, in the office of Mr. Earle, and that objection had been made to the payment of the moneys to these persons in regard to whom the charge of lobbying services was made. There was no account stated, and the failure to bring suit for an accounting until January, 1901, two years after the appropriation act of 1899, from which payment might be made, cannot be regarded as laches to prevent a recovery in this suit.

The objection that there was in reality no liability on the original contract arising out of services performed by the administrator after the death of William E. Earle cannot be sustained. The accounting has been treated by both parties as one proper to be made for the whole period, including that which elapsed subsequently to the death of Mr. Earle. The defendant recognized this right by making the accounting not only for fees received prior to the death of Mr. Earle, but for such fees as were received under the appropriation act of 1899. The account presented by the Earle estate to the Causten estate admits an indebtedness due from the administrator of the former of something over $2,000, and the account purports to be one between the estate of Earle and the estate of Causten, and it embraces not only fees received by William E. Earle in his lifetime under the appropriation act of 1891, but fees received by the estate of Earle under the appropriation act of 1899. Thus both parties seem to have treated the account as

one account, with reference to the act of 1891 and also to that of 1899, and we think that under the circumstances the defendants should be held liable to account therefor as indicated.

The account should be restated by allowing credit to the defendant of $6,500, the amount paid the attorneys as already stated. As to all other matters, the decree is right. The proper disposition of the case is to dismiss the appeal in No. 12, because the decree appealed from is not a final one, and to reverse the decree in No. 388, for the purpose of making the proper credit to defendants in the account.

Reversed.